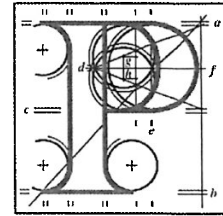


Our Case Number: ABP-315183-22

Planning Authority Reference Number: LRD6002/22S3



**An
Bord
Pleanála**

Brenda and Finbarr Kelly
1 Vernon Heath
Vernon Avenue
Clontarf
Dublin
Dublin 3

Date: 21 December 2022

Re: Construction of 580 no. apartments and associated site works.
Lands to the east of Saint Paul's College, Sybil Hill Road, Raheny, Dublin 5

Dear Sir / Madam,

An Bord Pleanála has received your submission including your fee of €50.00 in relation to the above-mentioned large-scale residential development and will consider it under the Planning and Development Act 2000, as amended.

Your observations in relation to this appeal will be taken into consideration when the appeal is being determined.

Section 130(4) of the Planning and Development Act 2000, as amended, provides that a person who makes submissions or observations to the Board shall not be entitled to elaborate upon the submissions or observations or make further submissions or observations in writing in relation to the appeal and any such elaboration, submissions or observations that is or are received by the Board shall not be considered by it.

If you have any queries in relation to the appeal, please contact the undersigned. Please mark in block capitals "Large-Scale Residential Development" and quote the above-mentioned reference number in any correspondence with An Bord Pleanála.

Yours faithfully,

PP ED.

David Behan
Executive Officer
Direct Line: 01-8737146

LRD40 Acknowledge valid observer submission

Teil
Glaio Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

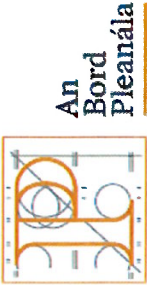
Tel (01) 858 8100
LoCall 1800 275 175
Fax (01) 872 2684
Website www.pleanala.ie
Email bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Lodgement Cover Sheet - LDG-060069-22

LRD 6002/22S3. 315183 LRD 40 to 18ve



Details

Lodgement Date	19/12/2022
Customer	Brenda and Finbarr Kelly
Lodgement Channel	Web Portal
Lodgement by Agent	No
Agent Name	
Correspondence Primarily Sent to	
Registered Post Reference	

Lodgement ID	LDG-060069-22
Map ID	
Created By	David Behan
Physical Items included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	LRD6002/22S3

Categorisation

Lodgement Type	Observation / Submission
Section	Strategic Housing

PA Name	Dublin City Council North
Case Type (3rd Level Category)	Appeal - LRD

Fee and Payments

Specified Body	No
Oral Hearing	No
Fee Calculation Method	System
Currency	Euro
Fee Value	0.00
Refund Amount	

Observation/Objection Allowed?	
Payment	PMT-046960-22
Related Payment Details Record	PD-046850-22

Observation

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	The development will consist of: 1. The construction of a residential development set out in 7 no. blocks, ranging in height from 4 to 7 storeys to accommodate 580 no. apartments,
--	---

residential tenant amenity spaces, a crèche and a 100 bed nursing home. The site will accommodate 520 no. car parking spaces, 1574 no. bicycle parking spaces, storage, services and plant areas. Landscaping will include extensive communal amenity areas, and a significant public open space provision. 2. The 7 no. residential buildings range in height from 4 storeys to 7 storeys accommodating 580 no. apartments comprising 272 no. 1 bed units, 15 no. 2 bed units (3-person), 233 no. 2 bed units (4-person), 60 no. 3 bed units. Balconies and terraces to be provided on all elevations at all levels for each block. The breakdown of residential accommodation is as follows: Block A is a 5 storey building, accommodating 61 no. units; Block B is a 5 storey building, accommodating 70 no. units; Block C is a 5-7 storey building, accommodating 112 no. units; Block D is a 4-5 storey building, accommodating 136 no. units; Block E is a 4-7 storey building, accommodating 96 no. units; Block F is a 5 storey building, accommodating 36 no. units; Block G is a 5 storey building, accommodating 69 no. units; Residential tenant amenity space is provided at ground level of Block C, D, E, F & G (c.961 sq.m). External residential open space between and adjacent all blocks. A crèche is provided in Block G with a total floor area of c.750 sq.m and external play spaces totalling c.583 sq.m. 3. A proposed 100 bed nursing home with ancillary amenity and service areas and staff facilities, located to the south of the site, as part of Block G. The proposed nursing home consists of a 4 storey building arranged around a courtyard garden which also forms part of the wider Block G. 4. Blocks C & D and F & G are located above a

residential tenant amenity spaces, a crèche and a 100 bed nursing home. The site will accommodate 520 no. car parking spaces, 1574 no. bicycle parking spaces, storage, services and plant areas. Landscaping will include extensive communal amenity areas, and a significant public open space provision. 2. The 7 no. residential buildings range in height from 4 storeys to 7 storeys accommodating 580 no. apartments comprising 272 no. 1 bed units, 15 no. 2 bed units (3-person), 233 no. 2 bed units (4-person), 60 no. 3 bed units. Balconies and terraces to be provided on all elevations at all levels for each block. The breakdown of residential accommodation is as follows: Block A is a 5 storey building, accommodating 61 no. units; Block B is a 5 storey building, accommodating 70 no. units; Block C is a 5-7 storey building, accommodating 112 no. units; Block D is a 4-5 storey building, accommodating 136 no. units; Block E is a 4-7 storey building, accommodating 96 no. units; Block F is a 5 storey building, accommodating 36 no. units; Block G is a 5 storey building, accommodating 69 no. units; Residential tenant amenity space is provided at ground level of Block C, D, E, F & G (c.961 sq.m). External residential open space between and adjacent all blocks. A crèche is provided in Block G with a total floor area of c.750 sq.m and external play spaces totalling c.583 sq.m. 3. A proposed 100 bed nursing home with ancillary amenity and service areas and staff facilities, located to the south of the site, as part of Block G. The proposed nursing home consists of a 4 storey building arranged around a courtyard garden which also forms part of the wider Block G. 4. Blocks C & D and F & G are located above a

PA Case Number

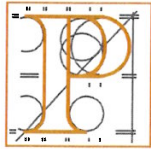
LRD6002/22S3

Development Description

proposed basement and central podium containing parking areas, plant areas, waste storage. The car-parking breakdown is as follows: Residential: 471 spaces across basement, podium and surface; Nursing Home: 41 across podium and surface; and Crèche- 8 all at surface level. A total of 1574 cycle parking spaces are provided at basement, podium and throughout the site in both secure parking facilities for residents and staff and at surface level for short term/visitors.5. Total public open space proposed is c.2.09 ha which includes a new c.1.78ha public open space which is provided to the south and east of the site and includes for 6 no. playing pitches of mixed sizes to be taken in charge by Dublin City Council (of a total area of c.1.8ha to be taken in charge). Proposed pedestrian access from the site to the adjacent St Anne's Park is proposed on the southern boundary of the site. 6. Widening and realignment of an existing vehicular access onto Sybil Hill Road to facilitate the construction of an access road with footpaths and on-road cycle tracks from Sybil Hill Road between Sybil Hill House and St Paul's College incorporating new accesses to Sybil Hill House and St Paul's College and the provision of new wall and railing boundary treatment along the new road and new pedestrian/vehicular gates to the new and existing accesses to Sybil Hill House and St Paul's College. To facilitate this new access road it is proposed to demolish an existing pre-fab building. The application also includes for the relocation of an existing pedestrian crossing on Sybil Hill Road. 7. The routing of surface water discharge from the site via St. Anne's Park to the Naniken River and the demolition and reconstruction of existing pedestrian river crossing in St.

PA Decision Date	28/10/2022
County	
Development Type	
Development Address	Lands to the east of Saint Paul's College, Sybil Hill Road, Raheny, Dublin 5
Appellant	
Supporting Argument	N/A

	Anne's Park with integral surface water discharge to Naniken River. 8. The proposed application includes all site landscaping works, green roofs, substations, PV panels, boundary treatments, lighting, servicing, signage, surface water attenuation facilities and associated and ancillary works, including site development works above and below ground. An Environmental Impact Assessment Report and a Natura Impact Statement have been prepared in respect of the proposed development. The planning application may be inspected, or purchased at a fee not exceeding the reasonable cost of making a copy, at the offices of Dublin City Council during its public opening hours and a submission or observation in relation to the application may be made to the authority in writing on payment of the prescribed fee within the period of 5 weeks beginning on the date of receipt by the authority of the application. The application may also be inspected online at the following website set up by the applicant www.foxlandsIrd2022.ie.
Applicant	
Additional Supporting Items	Yes



An
Bord
Pleanála

Large-scale Residential Development Appeal Observation

Online Reference
LRD-OBS-006082

Online Observation Details

Contact Name
Brenda and Finbarr Kelly

Lodgement Date
19/12/2022 15:38:39

Case Number / Description
315183

Payment Details

Payment Method
Online Payment

Cardholder Name
Brenda Kelly

Payment Amount
€50.00

Fee Refund Requisition

Please Arrange a Refund of Fee of

€

Lodgement No

LDG—

Reason for Refund

Documents Returned to Observer

☐

Yes

☐

No

Request Emailed to Senior Executive Officer for Approval

☐

Yes

☐

No

Signed

EO

Date

Finance Section

Payment Reference

ch_3MGIQJB1CW0EN5FC1wLNxmQS

Checked Against Fee Income Online

EO/AA (Accounts Section)

Amount

€

Refund Date

Authorised By (1)

SEO (Finance)

Authorised By (2)

Chief Officer/Director of Corporate Affairs/SAO/Board
Member

Date

Date

Case reference: LH29N.315179

315179: Lands to the east of Saint Paul's College, Sybil Hill Road, Raheny, Dublin 5 (LRD6002/22S3): Dublin City Council: ABP Case reference: LH29N.315179

Dear ABP,

We refer to the decision of the Dublin City Council to refuse planning permission for the above development and wish to make the following observations and statements.

1 SUPPORT FOR REFUSAL OF PLANNING PERMISSION AND ESPECIALLY FOR BRENT GEES CONDITION OF PLANNING AUTHORITY'S DECISION

- We strongly support the decision of DCC planning authority to refuse the above planning application albeit on the sole grounds of damage to the Brent Geese who used to frequent the area in the past.
- We doubly strong support in particular the stance taken by the Parks superintendent, colleagues and associates in relation to the Brent Geese and the protection of their habitat. The comments of Parks Department are prescient and their advocacy of the precautionary principal is well founded.

We cite Biodiversity Tree Surveys (BTS 1 and BTS 2) conducted in 2001 and 2002 in St. Anne's Park as valid further evidence and scientifically verifiable data in support of the decision of the Planning Officer and the Chief Parks Superintendent and his team. **(Appendix 1.)**

BTS 1 and BTS 2 also provides ABP with two additional valid data collection and analytical surveys that support a continuation of the refusal of the planning permission because of the wider impact which the development would have on biodiversity across the whole of St. Anne's Park

2 BIODIVERSITY TREE SURVEYS 1 AND 2 (BTS 1 AND BTS 2) SUPPORT CONTINUATION OF PLANNING REFUSAL

A brief note on the two Biodiversity Tree Surveys that have now been undertaken of selected areas of St. Anne's Park in the immediate hinterland of the Proposed Development. BTS 1 was conducted in 2021 and BTS 2 in 2022. Both have been sent to the Dublin City Parks Superintendent. The surveys prove factually, analytically and scientifically that biodiversity destruction and starvation in St. Anne's park is at a tipping point

The proposed imposition of a high-density residential development in the immediate hinterland of BTS 1 and BTS 2 will unquestionably be an additional biodiversity burden which St. Anne's Park will not be able to sustain as well as having very serious consequences for the Brent Geese.

BTS 1 and 2 demonstrate that the receiving environment of the Park is biodiversity impoverished and under risk of imminent catastrophic biodiversity failure. A summary of BTS 2 is enclosed as Appendix 1. Full copies of the Surveys can be made available

swiftly to ABP on request. The studies can be replicated easily, have high reliability and the data collected is robust.

We cite BTS 1 and BTS 2 in support of the need for ABP to continue to refuse Planning Permission for the Proposed Development. (Summary in **Appendix 1**)

3 ADMISSIBILITY AND VALIDITY OF ENVIROGUIDE RESPONSE ON THE SOLE CRITERION OF REFUSAL

We strongly object to the admissibility and purported validity of the contents of the submission and response by Enviroguide Consulting which confirms, rather than disproves, that there has ALREADY been and will continue to be harmful impacts on the Brent Geese into the future. The reasons are set out in Appendix 2.

Did the Developer Break the law by removing and destroying habitat for a protected species?

Are Brady Shipman Margin, and Enviroguide Consulting as long-term advisors to the proposed development also culpable of not bringing the possible breach of laws to the attention of the appropriate authorities for investigation?

How can the institutions of State (DCC Planning Authority and - hopefully not - ABP) turn a blind eye to the removal and destruction of habitat for the Brent geese without expressing the slightest qualms to the Competent authorities about possible breaches to our environmental, habitat and protected species laws?

A detailed rebuttal of the validity of the Enviroguide Response is attached at **Appendix 2**.

4 A POSSIBLE CONSTITUTIONAL IMPROPRIETY

We draw ABP's attention to a possible constitutional impropriety in regard to the structure, process and operation of the ABP Appeals Mechanism in this particular case.

We are suggesting that the process may be questionable Constitutionally as all evidence points towards the right of the citizen to appeal all other elements of the Planning Decision – other than the impact on the Brent Geese – being removed.

The corralling and funnelling of the totality of the planning approval into one single issue (impact on the Brent Geese) in the Planning Appeals Process seems invalid. In the event that ABP would overrule the condition, the whole of the other objectionable impacts of the development could be whistled through unscrutinised by the Appeals process!

There is a real risk that the process unfolding could lessen of citizens constitutional rights involved. The mechanism of how the possible Constitutional Impropriety could unfurl are set out in the Appendix. **See Appendix 3.**

5 IMPLICATIONS FOR ABP OF POSSIBLE BREACH OF HABITAT PROTECTION LAW

We are drawing ABP's attention to the evidence available in the Planning Officer's Report that the proposed development already involves a possible Breach of Habitat Protection Law by the Removal and Destruction of Habitat on the Proposed Development Site.

We have raised questions with DCC in regard to possible breach of duty of care and responsibility on the part of the Planning Authority in not drawing the attention of the appropriate authorities to those possible breaches.

The same duty of care to inform the appropriate authorities also now lies with ABP. See **Appendix 3**.

6 STRONG OBJECTION TO ALL ADDITIONAL ELEMENTS of PLANNING AUTHORITY'S DECISION (OTHER than protection of Brent Geese)

We strongly object to the other element of the DCC Planning Authority Decision which adopts a positive and approving stance to the proposed development. I would like to have the opportunity to contest the other aspects of the DCC Decision. It is not clear to me that the structure of the appeals process in this case allows that – which may be problematical Constitutionally. (See Paragraph Number 5 above)

Nevertheless, we will take the opportunity to register and resubmit the whole of our original submission to the Planning Authority to ABP also.

We believe that our original submission was not given adequate consideration because Wider Biodiversity Impacts and Climate Change impacts of the Proposed Development were not given due weight by the Planning Authority. (**Appendix 5**)

7 WIDER BIODIVERSITY IMPACTS OF THE PROPOSED DEVELOPMENT ON ST. ANNE'S PARK NEEDED TO BE REASSESSED BY ABP

We wish to strongly reassert our continued objections to the overall wider proposed development notably because of its biodiversity impacts and the existing capacity constraints in the receptor environment of St. Anne's Park for the development. I cite BTS 1 and 2 and my original submission to the Planning Authority in support of that. (**Appendix 1 and Appendix 5**)

7.1 Wider Biodiversity Impacts Not Given Adequate Consideration

The key point is that the analysis of the biodiversity impacts on the receiving / receptor environment in St. Anne's Park were not given due consideration by the Planning Authority.

Yet the planning officers report states:

...there is no significant objection to the delivery of a high density residential development Subject to And demonstration that the proposed development will not have a significant impact on biodiversity.

7.2 Non-Protected Species Also Need to Be Considered

The focus of most of the submissions and analysis has been on protected species mainly and not on the wider prevailing biodiversity degraded situation in the receiving area of St. Anne's park. The impact of climate change on the Park has not been formally assessed either, yet the ravages of climate change are visible for all to see in the Park.

It is apparent that the underlying principle being operationalised by the Planning Authority is that if specific species of animals, insects, invertebrates, lichen moulds etc are not listed in a legal or Government text there is no need to take any account of their welfare. In the meantime, the biodiversity degradation of St. Anne's Park continues. It is reasonable to conclude that existing laws and practices no longer meet the needs of the biodiversity degradation taking place in St. Anne's Park.

There is over reliance on outmoded, outdated laws for habitat and species protection that are no longer fit for purpose. The absence of adequate assessment of the additional impact of biodiversity loss and habitat destruction in the Park is the glaring omission of the Planning Authority's Report to date.

ABP is asked to redress that omission.

8 LEGALITY AND CONSTITUTIONALITY OF ABP GRANTING APPROVAL IN THIS CASE?

We strongly contest the legality and Constitutionality of ABP granting a planning permission to a proposed developed on a site in respect of which the applicant / developer has taken actions or allowed inactions to be taken therein and thereon that have resulted in the removal and destruction of habitat that have impacted adversely on the Brent Geese who used to frequent the area.

The relocation and disruption of the geese is taken as a fait accompli, an accomplishment to be proud of an achievement by the Developer, as is stated unambiguously in the Enviroguide Response.

The essence of the Enviroguide Response Case is that the appellant developer and associated advisors argue that the absence of geese, for which the developer or/ and his agents are responsible and accountable, justifies the granting of planning permission for the proposed development.

The most likely unlawful actions caused by the developer are agreed to be the basis and justification for the grant of permission.

8.1 ENVIRON CONSULTANTS BYSTANDER PARTICIPANTS IN REMOVAL AND DESTRUCTION OF HABITAT FOR BRENT GEESE?

It would appear to us from the submission that the advisors and signatory to the Enviroguide Response, have all been participating bystanders in the removal and destruction of habit on the site of the proposed development. How can anything they say be valid in the context of

the appeal? Should their activities possibly in acquiescence or support of the removal and destruction of the habitat be reported to the competent authorities?

We strongly urge that ABP refers the concerns raised about possible breaches of the law in relation to habitat for the protected species, in particular, be reported to the appropriate authorities. ABP has the duty of care to uphold the laws of the State generally as well as to operationalise its role and responsibilities under the Planning legislation.

Can ABP give a planning approval for a proposed development on a site which would endorse the most likely unlawful actions that created the conditions that allow for its approval to be given.

9 INVITATION TO ABP ASSESSORS TO VISIT THE PARK

The ABP assessors are invited to come and visit the Park and assess the biodiversity degradation taking place in the immediate hinterland of the Proposed Development. The areas of BTS 1 and BTS 2 will be sufficient to demonstrate the biodiversity frailty of the area. A further Biodiversity Tree Survey - BTS 3 is planned for early 2023 which is highly unlikely to disconfirm the findings of BTS 1 and BTS 2. What is clear is that that area of the Park cannot cope with existing human encroachment let alone the imposition of the equivalent of a town the size of Abbeyfeale on top of it. Granting planning permission here will tip the biodiversity balance irretrievably in the wrong direction. We will be happy to facilitate such a visit by giving any relevant assessors a guided Biodiversity Tree Tour of the area.

ABP is asked to uphold the Planning Refusal.

Yours sincerely,

Brenda and Finbarr Kelly

1 Vernon Heath,

Clontarf,

Dublin 3 **D03H3V9**

Appendix 1

Summary Second Biodiversity Tree Survey

Selected Area of St. Anne's Park Dublin 5

1 Introduction

The 2022 Biodiversity Tree Survey is a follow on to the first Biodiversity Tree Survey conducted in 2021. This was submitted to Mr. Leslie Moore, Parks, Biodiversity and Landscape Services Division, Dublin City Council on 9 December, 2021. The original BTS will generally be referred to as BTS 1 in this document. The 2022 Biodiversity Tree Survey will be referred to as BTS 2.

1.1 Main Indicators of Biodiversity Used in BTS 2

The main indicators of biodiversity used in BTS 2 are: tree population, diversity of tree species and associated insect counts.

Four other specific themes of the utmost importance emerged during the course of the Survey which have a direct bearing on the biodiversity status of the area of BTS 2 and St. Anne's Park more generally. These are:

1. The Negligible Contribution to Biodiversity of Heavily Managed Grassland;
2. Climate change, desertification and global warming;
3. The many insidious forms which human encroachment on St. Anne's Park take; and
4. DCC's land allocation and usage policies within St. Anne's Park.

Specific Sections of this Report are devoted to each of the indicators and themes set out above. BTS 2 also identifies a number of other general features of area surveyed and tree plantations which are worthy of mention. These include ground cover, understory and canopy cover. It is submitted that the paucity of insects and song birds in the area of BTS 2 is explained by reference to these indicators and themes.

1.2 What BTS 2 Does?

The Biodiversity Tree Survey enumerates the number of tree species present in the area, provides a summary of the population of each tree species present there and the number of insects associated with them. The paucity of insect life associated with the heavily managed grassland in the area is also highlighted.

Given the scale of the heavily managed grassland devoted to playing pitches and other heavy sporting infrastructure, BTS 2 presents observations on the quality of the environment in the area surveyed by reference to its designation as a Conservation area.

BTS 2 also highlights how the heavily managed grasslands are tantamount to a 'green desert' and are in urgent need of biodiversity restoration. The BTS raises a warning cry that under current management practices, this area of St. Anne's Park is particularly vulnerable to desertification arising from the onward march of global warming and climate change. Other insidious forms of human encroachment on St. Anne's Park are also examined.

1.3 Area of Biodiversity Tree Survey 2 (MAP 1)

The area of BTS 2 is bounded by the pathway to the playing pitches at Woodlands in the West, Mount Prospect Avenue and part of the Rose Garden on the East, Woodlands on the South and the main avenue through St. Annes' Park on the North.

The area covered is within the Conservation Area at St. Anne's Park, which in addition to being a conservation area is also a zone of recreational amenity (Zone Z9). A staggering 30 acres (12.32 hectares) of heavily managed grassland is devoted to playing pitches in the area unrelieved by any transverse tree, bush, shrub, flower or hedge.

A map of the BTS 1 and BTS 2 areas is set out below.

2 Conclusions

2.1 BTS 2 Area is Biodiversity Impoverished

The Survey concludes that the BTS 2 Area is severely challenged from a biodiversity perspective and is certainly, deteriorating for a variety of reasons particularly by the impacts of organisational human encroachment in all its guises in the area.

The General Findings of BTS 2 demonstrate that environmental, ecological and conservation conditions in the area of BTS 2 are well below acceptable standards from a biodiversity and 'Conservation' status perspective.

2.2 Major Rehabilitative Biodiversity Restoration Programme Is Needed

The BTS 2 survey endorses and corroborates the findings, conclusions and recommendations made in BTS 1. However, BTS 2 goes further than BTS 1 and is sounding the alarm bell for Dublin City Council in regard to the unsustainable biodegradation of the BTS 2 area of St. Anne's Park.

Biodiversity restoration is needed in this and, by extrapolation, in other areas of St. Anne's Park. It concludes that there is, for all intents and purposes, a biodiversity starvation process in operation in the area of BTS 2 in particular.

2.3 Critical Necessity for More Tree Planting

Some of the most important conclusions of BTS 1 are confirmed by BTS 2:

- a. The absence of a detailed specific and tailored tree planting strategy, woodland renewal, habitat restoration plan, an annual tree planting programme and complementary biodiversity plan for the area of St. Anne's Park surveyed is a strategic weakness.

- b. The data collected suggests that the area surveyed has not received the attention it deserves for decades in terms of additional tree planning; biodiversity initiatives and habitat protection especially for song-birds.”

2.4 Transverse Biodiversity Corridors are a Critical Necessity

BTS 2 also concludes that the provision of transverse biodiversity corridors / tree lines is a critical necessity for the BTS 2 area.

2.5 Absence of Biodiversity Oriented Strategic Plan for St. Anne's Park

BTS 2 concludes that there are lacunae in the Strategic Oversight and Management of the BTS 2 area and of St. Anne's Park as a whole. The combination of the BTS 1 and BTS 2 Surveys suggests that the absence of a publicly available Strategic Plan for St. Anne's Park allows sub-optimum decisions to be made concerning land allocations in the Park that are ad hoc and biodiversity detrimental. A new Biodiversity Oriented Strategic Plan for St. Anne's Park needs to be put in place. **Biodiversity Capacity Assessment Needed for St. Anne's Park**

The basic research conducted in the BTS 1 and BTS 2 areas shows that the burden bearing capacity of those areas is beyond the tipping point. What is ominous is that there appears to be no Biodiversity Capacity Assessment available from DCC for this area of the Park or the whole of the Park in general. An unchecked continuation of existing policies and practices will lead to the Infinite imposition of more human encroachment on the area. Do we need to continue these policies until the breaking point is reached and dire outcomes result? A biodiversity capacity assessment is needed for these areas in particular and St. Anne's Park as a whole.

2.6 All Findings Can be Extrapolated to Most Other Areas of St. Anne's Park

The most ominous conclusion from BTS 1 and confirmed by BTS 2 is that the findings of both Surveys are stark and regrettably can be extrapolated to many of the other heavily-managed grassland areas in St. Anne's Park with the exception of the Arboretum and other minor parts of the central core of the Park. Therefore, fundamental concerns arise about the accepted wisdom of the biodiversity richness of St. Anne's Park.

3 Recommendations

BTS 2 make four sets of recommendations.

- The first relates to the immediate necessity for large scale tree planting and change of park maintenance practices in the area of BTS 1 and BTS 2.
- The second set relates to a series of low cost readily implementable solutions to restore habitat and vegetation around the playing pitches in these areas; and

- The third refers to the necessity for a Biodiversity Oriented Strategic Plan to be prepared for St. Anne's Park and the BTS 1 and 2 areas of the Park in particular; and
- The fourth concerns the creation of a Community Consultative and Participation Forum on the biodiversity, maintenance, management and development of St. Anne's Park for the future.

All recommendations made are consistent and fully align with existing whole of Dublin City Council policy statements and the various global public park management and implementation strategies published by them. They are also fully aligned with the National Biodiversity Action Plan 2017 – 2021.

MAP: AERIAL SHOT OF AREAS COVERED BY BIODIVERSITY TREE SURVEYS 1 AND 2 ST. ANNES PARK



Appendix 2

Enviroguide CONSULTING Appeal Response to Dublin City Council's Refusal of Large-Scale Residential Development at lands to the east of St. Paul's College, Dublin 5 (Enviroguide Response)¹.

1 Enviroguide Response

Brady Shipman Martin and Enviroguide Consulting on behalf of the developer make a number of claims in the Enviroguide Response to countervail the decision of the Planning Authority.

- 1.1 An in-depth reading of the Enviroguide Response confirms rather than disproves that the proposed development has already had an adverse impact on the Brent Geese and will continue to do so in the future if the Refusal of Planning Permission is overturned.

“The submitted Natura Impact Statement

.....has not demonstrated that the evidence provided supports the assertion that no impact arises to the Dublin Bay populations of protected Brent geese.”

- 1.2 A significant number of statements in the Enviroguide Response clearly show that the proposed development not only has had a severe impact already on the Brent geese since 2019, when the grass was allowed to grow, but that that impact is likely to continue in perpetuity if the land is not restored to its former state and usage.

- 1.3 A number of relevant statements are set out below with our observations.

1.3.1 Enviroguide Response Page 3 states:

..... “all of which was used to demonstrate that the Light Bellied Brent Geese have successfully relocated to other ex-situ grassland feeding areas following the loss of the proposed development site.”

Comment by Brenda and Finbarr Kelly

We would question the use of the concept of ‘successfully located’ in this instance. What in effect has happened is that as a result of actions / inactions

¹ Attached to Brady Shipman Martin Appeal against planning refusal

taken by the developer the Brent Geese have been expelled from a traditional feeding ground on the proposed development site. Was and is there a breach of environmental law involved? What are the consequences for the developer?

1.3.2 Enviroguide Response Page 5 quotes from Price (2008):

“ it is difficult to predict with confidence, how birds will react to increased incidences of human disturbance'.

Comment by Brenda and Finbarr Kelly

The Enviroguide Report acknowledges that the Brent Geese have already left as a result of the actions of the Developer. There is no need for predictions and little reason for confidence. All are agreed that the geese have left and will not return until the lands are restored. The results of the actions of the developer on the site have already had a deleterious impact on the Brent Geese and have already pushed them out of the area.

1.3.3 Enviroguide Response Page 6 states:

“The NIS has demonstrated that there is no carry over effects due to the loss of the proposed development site,”

Comment by Brenda and Finbarr Kelly

The Geese have been evicted from the proposed development site. That eviction is a carryover loss which will last for centuries unless the proposed site is restored to its former state and usage.

1.3.4 Enviroguide Response Page 8 states:

“For the purpose of the NIS the trends cited in the NIS (7.2.3 and 7.3.3)are sufficiently robust to enable the determination that the loss of a single ex-situ site (the site of the Proposed Development) has not and will not have any significant impact on LBBG”

Comment by Brenda and Finbarr Kelly

Is displacement not an impact? How can the developer argue that the loss of an important single feeding ground for a protected species does not have an impact?

The proposed development site was a traditional feeding ground, which has now been made inaccessible to the Brent Geese because of the actions of the developer with the intellectual and professional support of Enviroguide Consulting. The claims being made by Enviroguide Consulting seem baseless and devoid of meaning in the

light of the facts which they bring to attention right throughout the Response document.

1.3.5 Enviroguide Response Page 8 states:

“The short-term trend of LBBG is for decline and this is recognized in Section 7.3.2 of the NIS”

Comment by Brenda and Finbarr Kelly

This is a straightforward acknowledgement that the impact of the proposed development is at least a factor and a contextual consideration in the decline of the Brent geese.

1.3.6 Enviroguide Response Page 8 states:

“However, we acknowledge that they (*the data on numbers of geese*) state that the numbers should perhaps (be) regarded as stable rather than increasing and....”

Comment by Brenda and Finbarr Kelly

Surely, it is an impact on the Brent Geese if the best the Appellant can state is that their population is stable albeit over a very short time frame. How do we know that it will not be jeopardised in a short while?

Again, if numbers are only stable, the removal of the site for the proposed development is yet another relevant impact criterion on the Brent Geese.

1.3.7 Enviroguide Response Page 9 states:

... “the loss of a single site namely the site of the proposed development, will not have any impact on the breeding success of the species for the reasons stated above as the birds have successfully relocated to other suitable sites within the wintering network.”

Comment by Brenda and Finbarr Kelly

Eviction from a site should not be characterised as ‘successful’ relocation. Disturbance to birds feeding grounds and environmental safety does impact on their fertility and reproduction. The Brent Geese were forcefully removed. They had no option in the matter once the grass was allowed to grow.

1.3.8 Enviroguide Response Page 9 states:

....“2019 (see NIS Section 7.3.1 and Table 12) which was the breeding season immediately after the first winter that the site of the proposed development was

unavailable to them following a change to the habitat namely the winter of 2018/2019.

Comment by Brenda and Finbarr Kelly

This is an unambiguous confession that the developer, Brady Shipman Martin, and Enviroguide Consulting were fully conscious and aware that the site of the proposed development was unavailable to the Brent Geese following a change to the habitat viz. Grass being allowed to grow in 2019.

It is difficult to credit that such a blatant destruction of habitat can be allowed to go without Government reprimand.

How can ABP give a Planning Approval for a site which removed habitat from a protected species?

How can a situation where

“the site of the proposed development was unavailable to them following a change to the habitat”

because of actions by the Developer be considered as having no impact on the Birds? We would recommend that the ABP Planning Officer should visit that site to see at first hand the series of actions / cessation of actions which rendered the site unsuitable for Brent Geese viz. not cutting the grass to the level at which the Brent geese graze it)

1.3.9 Enviroguide Response Page 15 states:

... “the point of the NIS is to demonstrate that the birds have successfully relocated to other sites following the loss of the proposed development site without any significant impact”

Comment by Brenda and Finbarr Kelly

This is a clear statement by Enviroguide that the loss of the proposed development site has already had an ‘impact’ on the Brent Geese – a protected species. Enviroguide no doubt would consider any or all impacts to be non-significant. All that is in question is the scale of the impact and the Enviroguide Report acknowledges that the population of geese is at best stable and the loss of the site may have impacted on reproduction rates. What other criteria do we need to prove significance? We have reproductive impacts and survival risk. Are these not significant in a very small population of a protected species?

1.3.10 Enviroguide Response Page 16 states:

..... “they relocated successfully when the Proposed Development site became less than optimal for their use and that there is adequate additional ex-situ

feeding available to them to support both current and potentially increased populations.”

Comment by Brenda and Finbarr Kelly

Let’s be clear about the use of Plain English here! The Geese were effectively evicted from the Proposed Development site when the grass was allowed to grow long. There is no validity in using constructive ambiguity here to conceal the truth of the removal and destruction of habitat for the Brent Geese. Describing the site as becoming “less than optimal for their use” is taking descriptive and defensive language too far!

2 DCC Planner’s Report

The DCC Planner’s Report also makes it clear that the Planning Authority considers that

“it has not been established beyond reasonable scientific doubt that adverse effects on site integrity will not result and that displacement of geese as a result of the proposed development will not, and has not, caused significant negative impacts to Light Bellied Brent Geese.

Note the adverse impacts on the site are construed as having displaced the geese already and as having caused significant negative impacts to Light Bellied Brent Geese.

Appendix 3

A POSSIBLE CONSTITUTIONAL IMPROPRIETY

3 Decoupling of Planning Approval for the Overall Proposed Development by the Planning Authority from the ABP Planning Appeals Process

The developer has lodged an appeal with An Bord Pleanála against the refusal of the planning application. The appellant on behalf of the promoter of the proposed development is emphatically stating that the development has received the full approval and backing of the planning authority with the exception of the single reason for refusal of the planning application. This issue concerns damage to the Brent geese.

The Manager's Order states:

"The submitted Natura Impact Statement has not demonstrated that the evidence provided supports the assertion that no impact arises to the Dublin Bay populations of protected Brent geese."

According to the appeal submitted on behalf of the developer, the single issue for consideration before the An Bord Pleanála is to confirm or reject that sole and single reason for the planning Authority's rejection of the proposal.

4 Constitutional Considerations

There is a Constitutional and legal rights issue lurking below the surface here of what appears to be a fair, open and transparent appeals system with equal access to the promoter and the local citizenry.

The Constitutional issue here might escape attention as citizens and Councillors hurry to prepare their reasons why the Single Issue rejecting the proposed development should stand.

The detailed reasoning for the concerns is set out below and I think that the issue needs to be raised by Councillors promptly with the legal advisors in the Planning Authority or ABP itself.

5 The Mechanics of the Process

The process as set out allows ABP to make two possible decisions.

Scenario A:

A confirmation of the Planning Authority's decision / condition in regard to the Brent Geese;
or

Scenario B:

A rejection of the sole condition of the Planning Authority in relation to the Brent Geese.

In the case of **Scenario A**, the citizenry who have objected to the development for decades will be satisfied but the developer will not.

In this case no Constitutional impropriety would arise. The disappointed party (the developer) will be most unhappy but at least will have had his Constitutional rights of appeal fully respected, honoured and put into operation before the totality of the planning system (including the right of appeal to ABP). He will have been given full and open access to the appeal system.

On the other hand, under **Scenario B**, a rejection of the sole condition or another one substituted in its stead, would have very different results. Needless to say, the outcome would result in a happy developer and a disappointed group of citizens who feel that the proposed development should not go ahead in any guise whether or not it affected the Brent geese.

This is where it would seem that there are serious Constitutional and Citizen rights and legal issues involved for the Planning Authority and perhaps ABP

6 Constitutional Issue

In the case of Scenario B, there is a perverse outcome in that the general citizenry who, like myself, objected to the proposal on many grounds will be denied the opportunity to appeal the totality of the decision of the DCC Planning Authority to ABP.

In this case the disappointed party (political leaders and general citizenry) will be most unhappy on a number of counts.

The first being the decision itself.

The second being the denial to them of any opportunity to appeal the totality of the decision of the Planning Authority.

Thirdly, the citizens' rights being corralled into a very restricted and narrow channel which only allows them to support the sole condition of the Planning Authority.

It seems that there is something wrong here!

7 Denial of Constitutional Rights

The perverse outcome would be that the general citizens would NOT have their Constitutional right to a fair hearing and access to appeal fully respected, honoured and put into operation before the totality of the planning system. The citizen would, in effect, have been duped, into being excluded of their Constitutional right to make an appeal regarding the decision on the totality of the proposed development taken by the DCC Planning Authority.

8 Veracity of Planning Appeals System

The planning process is supposed to be open fair and accessible to the citizen person just as much as the corporate citizen. The implied decoupling of planning approval for the overall proposed development from the ABP Planning Appeals Process seems us to be a dubious and opaque process which renders fair and equal access to the planning system highly difficult.

9 Other Complicating Factors

This possible Constitutional Impropriety is compounded a few other factors:

- the removal and destruction of the habitat by the promoter; and
- the non-activation of the request for additional information by the Planning Authority under the LRD arrangements.

10 What ABP Needs to Do!

Overall, ABP needs to assure itself that the process being unfolded is compatible with our Constitution. Some mechanism must be found to ensure that the Citizenry can appeal the totality of the decision in the event that the Brent Geese condition is overturned.

Appendix 4

IMPLICATIONS FOR ABP OF POSSIBLE BREACH OF HABITAT PROTECTION AND OTHER LAWS

11 Is Removal and Destruction of Habitat By Developer on Proposed Development Site a Breach of Habitat Protection and Other Laws?

11.1 The Planner's Report -Two Due Process Issues

The risk of possible Constitutional Impropriety referred to in **Appendix 3** is further strengthened by two due process issues raised in the Planner's Report. These are:

- Request for further information under LRD was not activated; and
- The Displacement of Brent Geese already brought about by the proposed development.

11.2 Request for further Information Not Activated

The Planner's Report states:

"The LRD application process allows for a request for further information in relation to matters of technical or environmental detail. In this instance, it is considered that the scale of studies required across the existing Brent Geese feeding grounds and potentially across a number of winter seasons would be beyond the remit of a further information request."

In essence this decision seems to be arbitrary, autocratic and unaccountable and one taken without any democratic or political accountability. In the context of the 'corralling' of citizen's right in the overall planning process outlined above, the decision can be seen to be tendentious in favour of the Developer who is effectively being gifted the high ground in terms of his appeal to ABP.

Because of the decision, the citizen is being asked to make submissions to ABP in the absence of the correct and valid data to allow them to make an informed decision. This is very bad administration and decision making by the Planning Authority.

Setting aside the request for information seems prejudicial in favour of the developer especially when considered with the Planner's Report acknowledgement that there is reasonable doubt that the geese have already been impacted by the proposed development. See 2 below.

The Planning Authority and DCC may need to reconsider this decision.

11.3 Significant Damage to Brent Geese has Already Been Caused?

The Planner's Report also states;

"In this context, it is considered that it has not been established beyond reasonable scientific doubt that adverse effects on site integrity will not result and that displacement of geese as a result of the proposed development will not, and has not, caused significant negative impacts to Light Bellied Brent Geese."

What is clear from the conclusion is that the Planning Authority has already formed the view that there is reasonable concern that the

"displacement of geese as a result of the proposed developmenthas ... caused significant negative impacts to Light Bellied Brent Geese." [Note the Past Tense]

Prima facie, the Planning Report seems to acknowledge that the actions of the developer over the past number of years has resulted in the removal and destruction of habitat for the Brent Geese in the St. Paul's Playing Pitches.

11.4 A number of local Clontarf DCC Councillors have been requested to establish

- if there are penalties to be applied to developers whose actions result in the destruction or removal of habitat?
- If there is a competent authority to whom suspicions of damage and removal of habitat ought to be reported?
- Are there penalties for developers who allow or permit the destruction or removal of habitat for protected species on their lands?
- Is there a duty of care and responsibility on the part of the Planning Authority or DCC itself to report the concerns about habitat removal and destruction to the relevant competent authorities? and
- Is there a duty of care and responsibility on the part of the Planning Authority or DCC itself to make it clear to ABP that they have brought the issue of the removal and destruction of the habitat for the Brent Geese to the attention of the competent investigative authorities?

Finally, a developer who engages in the removal or destruction of habitat ought not to be facilitated by the Planning System to double down on the removal and destruction by being granted planning permission for the for doing so on the site concerned.

Developers, in respect of whom, any public body has formed a reasonable view that they have removed and destroyed habitat should be penalised and not rewarded by the Planning System (DCC Planning Authority and ABP – jointly and severally) for doing so.

DCC and the DCC planning authority cannot ignore the contents of the Planner's Report in regard to the destruction of habitat. Again, prima facie, that would seem to be an offence that merits investigation. It ought to be a disqualifier of the entire appeal by the developer also.

12 Question for ABP and Recommendation

Would it be lawful for ABP to grant planning permission for the proposed development in these circumstances?

ABP is asked to turn down the Appeal on this basis alone.

Appendix 3

IMPLICATIONS FOR ABP OF POSSIBLE BREACH OF HABITAT PROTECTION AND OTHER LAWS

13 Is Removal and Destruction of Habitat By Developer on Proposed Development Site a Breach of Habitat Protection and Other Laws?

13.1 The Planner's Report -Two Due Process Issues

The risk of possible Constitutional Impropriety referred to in **Appendix 3** is further strengthened by two due process issues raised in the Planner's Report. These are:

- Request for further information under LRD was not activated; and
- The Displacement of Brent Geese already brought about by the proposed development.

13.2 Request for further Information Not Activated

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Because of the decision, the citizen is being asked to make submissions to ABP in the absence of the correct and valid data to allow them to make an informed decision. This is very bad administration and decision making by the Planning Authority.

Setting aside the request for information seems prejudicial in favour of the developer especially when considered with the Planner's Report acknowledgement that there is reasonable doubt that the geese have already been impacted by the proposed development. See 2 below.

The Planning Authority and DCC may need to reconsider this decision.

13.3 Significant Damage to Brent Geese has Already Been Caused?

The Planner's Report also states;

“In this context, it is considered that it has not been established beyond reasonable scientific doubt that adverse effects on site integrity will not result and that displacement of geese as a result of the proposed development will not, and has not, caused significant negative impacts to Light Bellied Brent Geese.”

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Prima facie, the Planning Report seems to acknowledge that the actions of the developer over the past number of years has resulted in the removal and destruction of habitat for the Brent Geese in the St. Paul’s Playing Pitches.

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- if there are penalties to be applied to developers whose actions result in the destruction or removal of habitat?
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Developers, in respect of whom, any public body has formed a reasonable view that they have removed and destroyed habitat should be penalised and not rewarded by the Planning System (DCC Planning Authority and ABP – jointly and severally) for doing so.

DCC and the DCC planning authority cannot ignore the contents of the Planner’s Report in regard to the destruction of habitat. Again, prima facie, that would seem to be an offence that merits investigation. It ought to be a disqualifier of the entire appeal by the developer also.

14 Question for ABP and Recommendation

Would it be lawful for ABP to grant planning permission for the proposed development in these circumstances?

ABP is asked to turn down the Appeal on this basis alone.

Appendix 5

**Original Objection to Planning Application Reference Number LRD6002/22-S3
by Mrs Brenda Kelly and Mr. Finbarr Kelly, 1 Vernon Heath, Vernon Avenue, Clontarf,
Dublin 3. D03 H3V9.**

Note to ABP

We consider that the Planning Report does not do justice to the validity of the concerns we raised in our original objection. Also the Possible Constitutional Impropriety Issue means that we cannot assume that the full Planning Authority Decision will be review in the Planning Appeals Process.

Therefore, we ask ABP to reconsider the whole submission but especially

SECTION C: CLIMATE CHANGE, BIODIVERSITY AND GLOBAL WARMING ISSUES; and
SECTION D: UNSUITABILITY AND LACK OF CAPACITY OF RECEIVING ENVIRONMENT
AND CATCHMENT AREA IN ST. ANNE'S PARK FOR PROPOSED DEVELOPMENT
(LRD6002/22-S3)

These two sections are particularly relevant in relation to the displacement of the Brent Geese that has already taken place because of the proposed development.

Full Submission Made to the Planning Authority is set out Hereunder

10 October 2022

A Chara,

I am writing in relation to the planning application submitted by Raheny 3 Limited Partnership for a large-scale residential development and nursing home on park lands to the rear of St. Paul's College, Sybil Hill Road, at St. Anne's Park, Raheny, Dublin 5 (Planning Application Reference Number LRD6002/22-S3). To this end, I enclose the requisite fee of €20.

I object in the strongest possible terms to Planning Application Reference Number LRD6002/22-S3. What the proposal entails is the equivalent of dropping a small town into a corner of St. Anne's Park which is a buffer zone to the Bull Island Special conservation area. I cannot stress highly enough the absolute inappropriateness of any development being allowed to take place on this site which is contrary to Zoning for the area.

Seventeen specific objections and observations are made which are grouped under four broad generic categories. The specific reasoning in support of each objection / observation is provided in the Attachment to this letter (18 Pages in all including letter).

SECTION A: LEGAL, ZONING ISSUES, MISLEADING DESCRIPTIONS AND ABSENCE OF DEMOCRATIC AND SOCIAL LEGITIMACY FOR PLANNING APPLICATION (LRD6002/22-S3)

1. Planning Application (LRD6002/22-S3) Contravenes the Humphreys J High Court Judgement
2. Planning application (LRD6002/22-S3) is an attempt to effectively re-zone the land by Illegitimate means
3. Planning Application (LRD6002/22-S3) Provides An Incorrect And Tendentious Description Of The Lands In Favour of the Developer
4. Proposed Development (LRD6002/22-S3) Is not compliant with Zoning Under Development Plan
5. Absence of Democratic and Social Legitimacy for Proposed Development (LRD6002/22-S3)

SECTION B – CRITICAL IMPERATIVES FOR DUBLIN CITY COUNCIL IN RELATION TO PLANNING APPLICATION (LRD6002/22-S3)

1. No Development Should be Permitted on this Site
2. Parcel Of Land Should Be Brought Back Into Public Ownership
3. Strategic Plan is Needed to Preserve and Enhance the Biodiversity of St. Anne's Park
4. A Much Broader Concept Of Public Health, Wellbeing and Amenity Needs to be adopted in relation to Planning Application (LRD6002/22-S3)

SECTION C: CLIMATE CHANGE, BIODIVERSITY AND GLOBAL WARMING ISSUES

1. The "Green Desert" that is the Receiving Hinterland of St. Anne's Park
2. Potential Desertification of St. Anne's Park

3. Planning Application (LRD6002/22-S3) will accelerate the Biodiversity Degradation of St. Anne's Park

SECTION D: UNSUITABILITY AND LACK OF CAPACITY OF RECEIVING ENVIRONMENT AND CATCHMENT AREA IN ST. ANNE'S PARK FOR PROPOSED DEVELOPMENT (LRD6002/22-S3)

1. Human and Commercial Encroachment on St. Anne's Park is already Unsustainable and at a Tipping Point
2. Prevailing Land Allocation, Management And Maintenance Policies In St. Anne's Park are Regressive
3. Equivalent of a Small Irish Rural Town is being deposited in a tiny part of the St. Anne's Park Demesne
4. Impact of Drainage System on Nanekin River and Cultural Artefacts in St. Anne's Park
5. Historic Buildings in Central Core of Park Already Compromised by Erosion of Nanekin River

Each individual observation made raises profound existential concerns in regard to the future sustainability of St. Anne's Park as a viable public park with high levels of biodiversity and citizen amenity. In-combination the individual fault lines in Planning Application Reference Number LRD6002/22-S3. escalate matters to the more dramatic clear, present and imminent danger level in terms of biodiversity and preserving the cultural, historic, social and amenity value of St. Anne's Park.

I trust that the Planning Officer will give careful consideration to the imminent dangers that Planning Application Reference Number LRD6002/22-S3 represents for the future viability of St. Anne's as a Public Park. What needs to happen is that the planning application needs to be refused and the parcel of land - generally referred to as the - St. Paul's playing pitches - should be brought back into public ownership through compulsory purchase.

Your sincerely,

Brenda and Finbarr Kelly,

1 Vernon Heath,

Clontarf,

Dublin 3.

ATTACHMENT

DETAILED OBJECTIONS TO PLANNING APPLICATION (LRD6002/22-S3) BY

**MR. FINBARR KELLY, 1 VERNON HEATH, VERNON AVENUE, CLONTARF, DUBLIN 3.
D03 H3V9.**

SECTION A: LEGAL, ZONING ISSUES, MISLEADING DESCRIPTIONS AND ABSENCE OF
DEMOCRATIC AND SOCIAL LEGITIMACY FOR PLANNING APPLICATION (LRD6002/22-S3)

6. Planning Application (LRD6002/22-S3) Contravenes the Humphreys J High Court
Judgement

The current planning application (LRD6002/22-S3) is in contravention of the Judgement of Humphreys J. delivered on Friday the 7th day of May, 2021 ([2021] IEHC 303) which found that the zoning of the St Pauls Playing Fields is tied to its established use as a sports ground. The change of ownership does not change the zoned use, which in the judgement was confirmed to be a sports ground.

As such, the lands legal use remains that of a sports ground, not a residential development site and so planning permission for residential development cannot be granted.

7. Planning application (LRD6002/22-S3) is an attempt to effectively re-zone the land by
Illegitimate Means

This latest planning application is an attempt to effectively re-zone the land without going through the required rezoning process that is a reserved function of Dublin City Council's elected representatives. The elected representatives on Dublin City Council are unanimous in their support of the community to protect these lands for their established sporting and biodiversity uses. This planning application is contrary to the clear intentions of the democratically elected representatives in that it has been lodged after they have sought to protect the lands by designating them Z9 "Amenity Use" in the current Draft City Development Plan 2022-2028. Furthermore, the application appears to disregard the Humphrey's ruling, issued in response to An Bord Pleanála's flawed decision to grant permission for a large-scale development on these lands. (ABP-305680-19).

8. Planning Application (LRD6002/22-S3) Provides An Incorrect And Tendentious
Description Of The Lands In Favour of Developer

In planning application (LRD6002/22-S3) the lands are described as "Lands to the east of Saint Paul's College, Sybil Hill Road, Raheny, Dublin 5" whereas they should be more accurately described as the St. Pauls Playing Fields in St

Anne's Park. These lands are historically, geographically, ecologically and socially a part of St Anne's Park.

9. Proposed Development (LRD6002/22-S3) Is not compliant with Zoning Under Development Plan

The proposed pitches shown on the current application are miniature pitches, amounting in total to slightly larger than one GAA pitch, in lieu of the original 6 pitches from which sporting use was terminated by the applicant. This proposed shrinking of the original sports provision on the lands is not acceptable in planning terms and it cannot work for the wide sporting community previously served by the lands. The proposed development does not retain or protect the existing sporting and amenity use of the lands and therefore the development is not in compliance with the zoning under the Development Plan.

10. Absence of Democratic Social Legitimacy for Proposed Development (LRD6002/22-S3)

The proposal has no democratic or social legitimacy. Instead, the proposal is replete with a self-serving operational developer bias which seeks to bend the public and social interest to the will of individual profit-making enterprises.

Secondly, the systematic and unrelenting efforts being undertaken by the Developer to obtain planning permission on the site is contrary to the wishes of the local politicians and the population of the Clontarf and Raheny areas.

How is it that our planning laws and processes can ignore the will of the population concerned and their public representatives?

How is it that the applicants and the planning authorities are above the public will in this instance?

The history regarding the disposal of the site by Dublin City Council, its purchase and current ownership provides an unpleasant backdrop to the current proposal. Bending the public interest to the whim of private profit-oriented undertakings seems to lack Constitutional underpinning.

The history of the proposed developments for this parcel of land and other developments in the Park, taken together, seems to point to an apparent operational developer bias being facilitated by Dublin City Council Officials for private interests to the detriment of the interests of local residents in the precincts and electoral areas surrounding St. Anne's Park and their Councillors.

The Social wishes, political will and rights of the people and general public are being subjugated. The public will of the people as expressed many times

is that the land on which Planning Application (LRD6002/22-S3) is premised should revert to public ownership and amenity use.

I call on all public servants in Dublin City Council to be mindful that, in the fulfilment of the multiplicity of roles often conflicting which they are obliged to discharge, they do not succumb to the pressure being exerted on them to override the political and social will of the people and ignore the political will of councillors.

SECTION B – CRITICAL IMPERATIVES FOR DUBLIN CITY COUNCIL IN RELATION TO PLANNING APPLICATION (LRD6002/22-S3)

Other important considerations arise in relation to the Proposed Development. The most obvious are of concern to Dublin City Council in its administrative, developmental, cultural social and other roles in addition to its role as Planning Authority for Dublin City.

1. No Development Should be Permitted on this Site

No development at all should be permitted on this parcel of land which historically was an integral part of St. Anne's Park. Development of any nature on this site is inimical to the public health and wellbeing of humans and animals and biodiversity. The role of St. Anne's Park during the Covid Pandemic underlined its importance for human health and wellbeing and social distancing and availability of uncontaminated fresh air served the public well.

Allowing the further encroachment of private stakeholders within and in the precincts of the Park would be a very short sighted, narrowly focussed decision that would not serve the welfare of humans and nature over the next century.

2. Parcel Of Land Should Be Brought Back Into Public Ownership

The parcel of land making up the St. Paul's Playing Pitches should be brought back into public ownership and restored as an integral part of St. Anne's Park. The National Exchequer is in gross surplus at the moment and will be for a number of years arising from windfall Corporation Taxes from the multinational sector.

An opportunity is now presented for Dublin City Councillors to request funding from Central Government to fund the reacquisition of the St. Paul's Playing Pitches. Such a once off initiative would not unduly impact on the day-to-day operational expenses of the Dublin City Council.

It would be in the national interest for some of this bountiful and unprecedented tax bonanza to be used for once off acquisitions like the repurchasing of the St. Paul's Playing Pitches. Such capital acquisitions would help to alleviate undesirable inflationary impacts on the economy more generally arising from the windfall surplus.

The unexpected and unprecedented tax bonanza for the Exchequer provides a unique opportunity to bring the St. Paul's playing pitches back into public ownership!

3. Strategic Plan is Needed to Preserve and Enhance the Biodiversity of St. Anne's Park

One of the major lacunae facing the planning officer in relation to Planning Application (LRD6002/22-S3) is the absence of a publicly available SWOT analysis and Strategic Plan for the ecological management, biodiversity sustainability, maintenance, renewal and development of St. Anne's Park.

A proper Strategic Plan and SWOT analysis needs to take place covering the full requirements of St. Anne's Park to prepare for the challenges of the future. While hard choices face us all, the further biodiversity degradation of St. Anne's Park should not be on the agenda.

A long-term holistic overview of St. Anne's Park is necessary. The objective of the Strategic Plan should be to preserve the integrity, biodiversity and ecology of St. Anne's Park and not to diminish it.

If approved, Planning Application (LRD6002/22-S3) will push the ecological viability and sustainability of St. Anne's Park in the wrong direction. The proposed development would represent an unprecedented intrusion into the public space which is not capable of sustaining any further developmental incursions.

4. A Much Broader Concept Of Public Health, Wellbeing And Amenity Needs to be adopted in relation to Planning Application (LRD6002/22-S3)

It is noted also that there is no Public Health and Wellbeing Impact Assessment included in the Planning Application in respect of the proposed development.

Public health, wellbeing and availability of amenity are much broader concepts than catering for the sporting needs of youth and remedying national deficits which have persisted for decades in providing private and social housing needs.

Sacrificing the public health, wellbeing and amenity value of St. Annes' Park to the needs of these elements of society only is not fair, equitable or sensible.

A much broader concept of public health, wellbeing and amenity needs to inform all decision making in Dublin City Council and especially the planning decision in regard to Planning Application (LRD6002/22-S3)

SECTION C: CLIMATE CHANGE, BIODIVERSITY AND GLOBAL WARMING ISSUES

What's missing from Planning Application (LRD6002/22-S3) is as Important as what's included. The most significant omissions from Planning Application (LRD6002/22-S3) is the adequate treatment of the burning policy issues of our time viz. global warming, climate change and biodiversity and the specific impact of the proposed development on the local climatic, biological and ecological systems within St. Anne's Park.

Planning Application (LRD6002/22-S3) does not deal adequately with the biodiversity, climate change and global warming impacts of the development on the existing frail and vulnerable biodiversity and ecology of St. Anne's Park itself.

Some of the more egregious shortcomings of Planning Application (LRD6002/22-S3) in relation to these issues are dealt with below.

4. The "Green Desert" that is the Receiving Hinterland of St. Anne's Park

The Appropriate Assessment Screening Report attached to Planning Application (LRD6002/22-S3) is incomplete. It ignores the biodiversity status of the 'receiving' hinterland of St. Anne's Park in which the development will be located. Instead, the promoters confidently expect St. Anne's Park to absorb the scale of development proposed without any harmful impacts.

Planning Application (LRD6002/22-S3), in the variety of environmental impact assessments that it seeks to rely on for justification, is happy to accept the current level of biodiversity degradation in St. Annes Park as acceptable, even as a desirable status quo that merits no adverse comment or expression of need for improvement.

Regrettably, the biodiversity status quo of St. Anne's Park is more akin to a "green biodiversity desert" than a thriving ecological space.

All analyses of land allocation and usage in St. Anne's Park, show that most of the parkland area of St. Anne's Park is already devoted to heavily managed grasslands - for the greater part playing pitches in this case - and surrounded in large measure by a monoculture of the same tree (*Quercus Ilex*). St. Anne's Park can only be described as being akin to what is more commonly to be understood and referred to as a "green desert".

The Appropriate Assessment Screening Report provided in support of Planning Application (LRD6002/22-S3) falls into the trap of accepting the status quo – the green desert - as the desirable steady state appropriate to a parkland of the standing of St. Anne's Park.

Heaping several hundred apartments and a nursing home on top of the existing green desert is hardly a desirable standard for Dublin City Council's biodiversity credentials.

On this ground alone, the proposal should fail.

5. Potential Desertification of St. Anne's Park

An adequate impact assessment of the proposed development on warming and potential desertification in St. Anne's Park and climate change is not provided.

Desertification in St. Anne's Park has Started?

The Southgate Associates' Map below provided by Cellnex for proposed development covered by Planning Application: 3617/22 (refused) shows an aerial view of St. Anne's Park (© OSi via www.geohive.ie)



The Planning Officer is asked to note how vast areas of the map show – not green fields - but vast areas covered is light colour. I have observed this process in operation for a number of years now in St. Anne's Park. My experience is borne witness to by the map. Would it be possible for a dust bowl to be created in St. Anne's Park? Watch the space!

The additional burden which Planning Application (LRD6002/22-S3) would place on St. Anne's Park from a climate change and global warming perspective will only accelerate the process of desertification already taking place in St. Anne's Park.

I'm not sure if it is possible for the Planner to visit the area but I would be more than happy to facilitate a visit simply to show what is happening on the ground, how

desertification of the Park is on the way and outline the major drivers of the desertification process in the Park. The Planning Officer ought not to be misled by the current state of the green sward in St. Anne's Park at this point. While we have had very dry periods in Clontarf and Raheny over the summer, the rains came at precisely the right time to facilitate grass production. Other plants in the Park have not fared so well.

The omission of the data in respect of climate change may be tantamount on its own as a disqualifier for the granting of Planning Application (LRD6002/22-S3).

The climate change impacts of the Proposed Development on St. Anne's Park, will make an existing bad situation worse

6. Planning Application (LRD6002/22-S3) will accelerate the Biodiversity Degradation of St. Anne's Park

Biodiversity Restoration Needs to be Prioritised

Biodiversity degradation is the major challenges facing St. Anne's Park and has been for decades. The proposed development will only acerbate the crisis.

This issue requires much more serious treatment than provided by the promoters in Planning Application (LRD6002/22-S3)

Biodiversity Tree Survey 2021

A Biodiversity Tree Survey (BTS) of a selected area of St. Anne's Park in 2021 was submitted to Mr. Leslie Moore, Parks, Biodiversity and Landscape Services Division, Dublin City Council on 9 December, 2021. The survey included over 1000 trees in St. Anne's Park bordering GAA Pitches 21, 22 and 23. This large area adjoins the 'receiving area' for the Proposed Development covered by Planning Application (LRD6002/22-S3).

The BTS sets out a number of critical challenges that are impacting on the biodiversity status of St. Anne's Park. The findings of the BTS suggest that the rich natural heritage of St. Anne's Park is not as healthy as may be perceived and is almost certainly deteriorating for a variety of reasons.

The BTS highlights some of the fundamental factors why the decline in the song bird population in St. Anne's Park is so dramatic.

These include

- habitat loss,
- management practices in regard to heavily managed grassland,

- lack of any tree planting of an appropriate scale for decades²,
- the choice of trees favouring low insect population scores, and
- Land allocation policies.

The most ominous inference from the BTS is that its findings can be extrapolated to large areas of the Park thereby raising fundamental concerns about the accepted wisdom of the biodiversity richness of St. Anne's Park. This includes the area of the Park in which the proposed (LRD6002/22-S3) is to be located.

Biodiversity Tree Survey 2022

A second iteration of the BTS is currently being finalised. The Second BTS covers the quadrant of St. Anne's Park which includes the Clontarf GAA Floodlit Pitches. The population surveyed includes 624 trees. This Survey endorses and corroborates the findings of the original BTS and sounds the alarm bell for Dublin City Council in regard the unsustainable biodegradation of these parts of St. Anne's Park.

Both areas included in the Biodiversity Tree Surveys are in close proximity to the St. Paul's Playing Pitches the subject of Planning Application (LRD6002/22-S3). These areas cannot sustain the additional impacts which the proposed development will entail.

Biodiversity restoration is needed in these areas not the additional ecological degradation implied by Planning Application (LRD6002/22-S3).

The supporting documentation for Planning Application (LRD6002/22-S3) does not address the existing parlous state of biodiversity decline in St. Anne's Park nor the additional deleterious impact which the planning application, if granted, will have on the frail, vulnerable and declining biodiversity and ecological status of St. Anne's Park.

² About 125 trees were planted in 2022 which is a very welcome development but the planting needs run to thousands of trees and not hundreds to make good the deficiencies of the past.

SECTION D: UNSUITABILITY AND LACK OF CAPACITY OF RECEIVING ENVIRONMENT AND CATCHMENT AREA IN ST. ANNE'S PARK FOR PROPOSED DEVELOPMENT (LRD6002/22-S3)

As already stated in Block C, Planning application (LRD6002/22-S3) does not deal adequately with the biodiversity, climate change and global warming impacts of the development on the existing frail and vulnerable biodiversity and ecology of St. Anne's Park – the receiving environment for the proposed development.

The receiving catchment area for development (LRD6002/22-S3) is compromised further in two other major respects;

- Human, commercial and recreational encroachment on the Park; and
- the prevailing land management and maintenance policies in place in the Park which is highly questionable from a variety of perspectives.

These are two further aggravating factors make the receiving environment even more inappropriate for the proposed development.

The following paragraphs explicate the main issues.

6. Human and Commercial Encroachment on St. Anne's Park is already Unsustainable and at a Tipping Point

Planning application (LRD6002/22-S3) must also be seen in the context of very damaging, prevailing and systemic management practices of the Parks, Biodiversity and Landscape Services Department of DCC in relation to the maintenance and management of St. Anne's Park.

St. Anne's Park is already suffering badly from human and commercial encroachment much of which is being proactively facilitated by Dublin City Council's Parks Biodiversity and Landscape Services Department (**Parks Department**).

7. Prevailing Land Allocation, Management and Maintenance Policies In St. Anne's Park are Regressive

The pattern of existing land usage and allocation policies within St. Anne's Park is a major factor in the biodiversity degradation of St. Anne's Park.

St. Ann's Park cannot sustain any further human encroachment let alone the scale of development that is proposed in PLANNING APPLICATION (LRD6002/22-S3).

Cafes, parking lots, markets, large international scale pop concerts, tennis courts, AstroTurf areas, the Clontarf and Raheny GAA and Soccer Playing Pitch reservations are all deepening a de facto proprietorial control over vast areas of the Park. The exponential growth in large-scale metal container boxes now visible in practically all areas of the Park is a further eyesore that is not controlled numerically or aesthetically.

Recent examples of further whittling away of land within and in the precincts of St. Anne's Park are:

- Parking by parents and Clontarf GAA and Officials on the grassed area of Sybil Hill Road;
- The creation of an additional transverse pitch at Clontarf GAA Pitch 19;
- Proposal by Parks and Biodiversity Department, DCC to facilitate the installation of unobtrusive telecommunications infrastructure in the Park (Planning Decision on Planning Application: 3617/22); and the
- Creation of additional spill over parking at the sea front within the Park near the tree sculpture at the Causeway to Bull Island.

The whittling away process is also accompanied by a tolerance by Parks Department of areas of dereliction for decades in the catchment area of the proposed Development and ignoring local requests to have long-standing access points to St Anne's Park restored.

The consequence of these management practices / land allocation policies within St. Annes' park is already limiting public access to what is termed a public park by Dublin City Council. The areas allowed for the citizen to enjoy the Park are being severely and systematically limited and whittled away with each passing season as matters stand.

No General Public Consultation on Land Allocation Decisions

By and large there is no public consultation process available for the general public to comment or submit observations on any and all these land allocation and usage policies which are generally conducted behind closed doors.

For the greater part, only single purpose sporting organisations seem to be allowed audience with Dublin City Council Officials. The general trend, which is unmistakeable, is favouritism of treatment to the corporate, private and local representatives of nationally organised sporting groups. There is a risk that the City Council is behaving inequitably in relation to land allocation and usage policies in this regard already.

Adding the proposed development (*Planning Application (LRD6002/22-S3)*) to the litany of egregious land allocations within or adjacent to the Park will only:

exacerbate this unfair and undemocratic de facto operational land allocation policy of the Parks Biodiversity and Landscape Services Department; and

diminish the amenity of the Park for the public with knock on impacts on public health and wellbeing; and

add to the biodiversity and climate change impacts on the Park.

8. *Equivalent of a Small Irish Rural Town is being deposited in a tiny part of the St. Anne's Park Demesne*

In general, it is not unreasonable to expect that the receiving environment and prevailing local social context for major developments ought to be given due weight in the decision-making for the implementation of major housing developments.

Equally, the origins of the national Government policies which have led to the proposed development must also be understood. This is especially the case where, it can be argued that, the development is the outcome of ill-thought out and underfunded national policies – private and social housing policy in this case.

The Equivalent of a Small Irish Rural Town is Proposed to be Dropped into a Small Corner of St. Anne's Park Demesne

An overview of Planning application (LRD6002/22-S3) shows that the proposed Development includes a multiplicity of apartment blocks and a 150-bed nursing home. On completion, the resident population of patients and staff associated with the nursing home and owners and renters of the apartments within the Development will be in the region of 1,000 and 2,000 people permanently.

The scale of the development is better understood by reference to the populations of a number of well-known Irish towns.

Planning Application (LRD6002/22-S3), if approved, would mean that the equivalent of a small Irish rural town would be foisted on a public park that is already on the brink of an ecological and biodiversity disaster and in the context of a drainage system in the Park that is already not fit for purpose.

The proposal is absurd, grotesque and surrealistic. A development equivalent to a small-town the size of Abbeyfeale, Co. Limerick (1,501), Athenry, Co. Galway (1,612) or Clane, Co. Kildare (1,822) is proposed be located in a tiny segment of St. Anne's Park.

The people of Clontarf deserve better. Planning Application (LRD6002/22-S3), should not be approved at all, let alone for a Public Park of the standing and importance of St. Anne's Park and in respect of lands which traditionally, historically and socially form an integral part of St. Anne's Park Demesne.

Vulnerabilities of Receiving Areas for the Development

The remnants of what remains of the cultural and historic integrity and biodiversity sustainability of St. Anne's Park cannot be further whittled away by the establishment overnight of a development - the equivalent in size of a number of small towns in rural Ireland - within the ever diminishing publicly available space in St. Anne's Park.

The vulnerabilities of the receiving area for the development have not been fully assessed or evaluated. This submission lists some of those including biodiversity loss, climate warming and desertification. To these we can add the poor and precarious state of the proposed drainage system of the Nanekin River.

History of Ownership of the Site is Vexed

The sad and lamentable history of all those associated with the disposal and current ownership of the land, cannot take away from the present reality which is that St. Paul's playing pitches have always been an integral part of St. Anne's.

St. Anne's Park: A Hapless Last Resort Recipient of Central Government Policy failures

It is reasonable to ask what are the factors driving the Development. It would be easy to fall into the trap of blaming the developer and the Dublin City Council exclusively. However, the more powerful primary but hidden cause of the development proposed is Central Government neglect, failure and policies to provide private and social housing for our citizens over decades. Is this proposed ecological disaster of (LRD6002/22-S3) not simply the logical consequence of the failure of Central Government policy on housing for decades.

What the Planning Authority is being Asked to do?

Dublin City Council is:

expected to give planning permission for an absurd, grotesque and surrealistic proposal to be integrated into a corner of St. Annes Park that does not have the capacity to support it.

Being asked to do so without the wider societal and environmental impacts being assessed and cognisance being taken of the lamentable history of the transfers in ownership of the St. Paul's playing pitches which are an integral part of St. Anne's Park.

Expected to make a decision that would partially address, the gross mistakes and failure of the past by Central Government which have persisted for over 50 years

Expected to help eradicate the failures and decade long mistakes of Central government at the stroke of the planning pen by nodding through the grotesque and unsustainable development that the St. Paul's pitches

and St. Anne's Park cannot sustain environmentally, socially culturally et. al.

Somebody has to call a halt to the madness! Planning application (LRD6002/22-S3) should be dismissed.

9. Impact of Drainage System on Nanekin River and Cultural Artefacts in St. Anne's Park

Planning application (LRD6002/22-S3) envisages no change in the utilisation of the Nanekin River to deal with the run-off of rain water from the St. Paul's Playing Pitches as is the practice at present. The developer indicates only, that a concrete bridge which has no architectural, cultural or historic value can be removed and replaced.

The Planning Officer will need no reminding that:

- The Nanekin River runs through the Central Core of the Park and many of the most important Victorian follies of architectural, cultural and historic significant find their homes on its banks;
- The Nanekin is a vitally important part of the biodiversity and ecological life of St. Anne's Park;
- The Part of the Nanekin between the Clock Tower and the Greek/Roman boat house at the pond adjacent to the discharge point into the sea is already showing signs of profound erosion and a major threat to the architectural, cultural and historic structures is already present; and
- The banks of the entire Nanekin River in St. Anne's Park from Raheny to the sea are already frail and vulnerable to any sudden or dramatic increase in rain fall.

Increased Volume, Flow and Speed of Water Discharges is Unsustainable

The increase in the volume and flow of water from the proposed development will have a major damaging impact on the banks of the Nanekin. The exponential increase in the speed of the flow of rain water from the proposed man-made structures to be placed on the development site will lead to an exponential increase in the erosion of the banks of the Nanekin River.

10. Historic Buildings in Central Core of Park Already Compromised by Erosion of Nanekin River

While extensive renovation has been done by DCC in recent years many of the buildings in the Central Core (walls in particular) are already steadily deteriorating. These include the buildings for the maintenance teams in St. Anne's Park; the Chinese Garden; the walls and canopies of the walled garden; even the Art Deco Railings (1904?) are all in a state of disorder and decay.

In short, the existing state of readiness and resilience of the Central Core of St. Anne's Park is severely compromised. It is in no condition to receive the additional volume and especially the speed of the flow of water discharge from the proposed development can only have the most dangerous and serious consequences for the further destruction of the central core of St. Anne's Park.

The use of the Nanekin for the discharge of water from the St. Paul's Playing pitches will greatly add to the erosion of the Banks of the Nanekin endangering further many of the buildings and structure that are of cultural, historic and architectural significance .

Transfer of Financial Burden to DCC and Exchequer

An interesting aside, is that the proposed development would transfer the financial burden for protecting the banks of the Nanekin River from the additional erosion it will cause from the developer to DCC and ultimately the Exchequer. It is hoped that DCC will provide elected Councillors with estimates of the additional cost to the Council of the increased erosion protection measures on the Nanekin River which the proposed development will have for the Exchequer and the Taxpayer.

Summary

The Nanekin does not have the structural defences or capacity to deal with the increase in the volume, flow and speed of the water which will drain from the proposed development – without massive investment. The banks of the Nanekin are already compromised and in a frail state. The increased discharge from the proposed development exponentially increases the risks to the historic, cultural and architectural significant buildings in the Central core of the Park.

For the above reasons alone, the development should be refused planning permission.