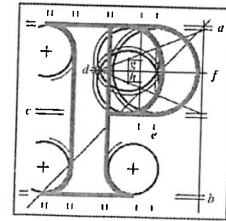


Our Case Number: ABP-315183-22

Planning Authority Reference Number: LRD6002/22S3



**An
Bord
Pleanála**

Clontarf Residents Association
c/o 425 Clontarf Road
Clontarf
Dublin 3

Date: 22 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,

David Behan
Executive Officer
Direct Line: 01-8737146

LRD40 Acknowledge valid observer submission

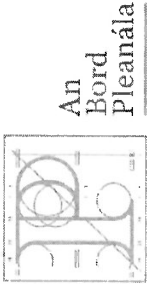
Teil
Glaao Áitiúil
Facs
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Ríomhphost

Tel (01) 858 8100
LoCall 1800 275 175
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Email bord@pleanala.ie

64 Sráid Maoilbhride
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Lodgement Cover Sheet - LDG-060153-22



Details

Lodgement Date	21/12/2022
Customer	Clontarf Residents Association
Lodgement Channel	In Person
Lodgement by Agent	No
Agent Name	
Correspondence Primarily Sent to	
Registered Post Reference	

Lodgement ID	LDG-060153-22
Map ID	
Created By	Klaudia Wiezowska
Physical Items included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	

Categorisation

Lodgement Type	Observation / Submission
Section	Strategic Housing

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

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-047037-22
Related Payment Details Record	PD-046927-22

Observation

315183 WRD 6002/2253
WRD 40 to Issue

PA Case Number	
PA Decision Date	
County	
Development Type	
Development Address	
Appellant	
Supporting Argument	

Development Description	
Applicant	
Additional Supporting Items	



C/O 425 Clontarf Road, Clontarf, Dublin 3, D03 T251

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA	
LDG-	060153
ABP-	
21 DEC 2022	
Fee: €	50
Type:	cash
Time:	15.21
By:	cash hand

21st December 2022

ABP Ref: 315183

DCC Ref: LRD 6002/22

Planning Application for

Lands East of St Paul's College, Sybil Hill Road, Raheny, Dublin 5

Dear Sir/Madam

The Clontarf Residents' Association would like to make the following observations on the above appeal and enclose herewith €50 fee.

Scope of Appeal

The appeal documents lodged by the Applicant deal with *"the single reason for refusal"* and welcome the Dublin City Council (DCC) conclusion that the proposed development would be in compliance with the Z15 zoning that applied to the site at the time that decision was made. It is our understanding that, as with any appeal to the Board, this matter will be considered *de novo*. We would therefore ask the Board to take the entirety of our observations to DCC, in addition to the observations contained herein, into consideration when determining this appeal.

Previous Planning Applications

The planning history for these lands is extensive and, as with any application or appeal, the Board should be familiar with this history. Details of previous applications and decisions are set out in our observations to DCC on this application. In order to ensure that this matter is dealt with, and perceived to be dealt with, in an open and transparent manner we would respectfully suggest that Planner's or Board Members involved in the previous applications for this site not be a party to this decision.

Zoning and Material Contravention

The application was lodged when the zoning of the site was Z15, *Institutional and Community*¹. Since then, the site has been rezoned to Z9, *Amenity/Open Space Lands/Green Network*². The Z9 objective aims *"To preserve, provide and improve recreational amenity, open space and ecosystem services."*³. Z9 lands include sports facilities such as the Developer's lands at St Paul's.

The Z9 objective cross-refers to Chapter 10: Green Infrastructure and Recreation, and Chapter 15: Development Standards. Amenity lands have a role in *"providing ecosystem services, such as improved biodiversity and ecological connectivity, nature-based surface water management, flood attenuation,*

¹ Dublin City Development Plan 2016-2022 (CDP 2016) Written Statement Page 250

² Dublin City Development Plan 2022-2028 (CDP 2022) Volume 1 Written Statement Page 539

³ Ibid

river corridor restoration and climatic resilience ...”⁴. The 2022 CDP goes on to say: “Generally, the only new development allowed in these areas, other than the amenity/recreational uses, are those associated with the open space use. These uses will be considered on the basis that they would not be detrimental to Z9 zoned lands.”⁵. Limited residential or commercial development may be allowed in exceptional circumstances, but only where it is essential to the long-term retention of the sporting facility on the site.

The Planning Report Statement of Consistency submitted with the application asserts that the proposed development would comply with the Z15 zoning that applied to these lands at the time the application was made. We note that the DCC Planner found that the proposal would comply with the Z15 zoning. We would dispute the Developer’s assertion and DCC’s finding in this regard for the reasons set out in our observations to DCC on this application. However, given that the lands have been rezoned in the new CDP this is in many ways immaterial.

Despite the fact that the Developer was aware of the change of zoning when this appeal was lodged there has been no attempt to assert how this application complies with the Z9. In our view, the application, in fact, would materially contravene the new CDP and there is no suggestion from the Applicant that this proposed development is in accordance with the new CDP.

Retention of the site is essential to ensure compliance with Green Infrastructure Policy GI13 Areas of Ecological Importance for Protected Species: “To ensure the protection, conservation and enhancement of all areas of ecological importance for protected species, and especially those listed in the EU Birds and Habitats Directives, including those identified as supporting the favourable conservation condition of any European sites, in accordance with development standards set out in this plan.”⁶.

Since 2018 the Developer has sought to destroy the site’s ecological value by allowing it to become overgrown. This does not alter its value as an ecological resource when properly maintained. To grant permission would permanently preclude the protection, conservation and enhancement of the ecologically important characteristics of the playing pitches. It would contravene the CDP and would be contrary to A4(4) of the Birds Directive which obliges the State and state authorities such as the Board to strive to avoid deterioration of habitats used by wild birds. Grant of permission for such a development is not, in our view, open to the Board.

We would also draw the Board’s attention to Policies GI49 that provides for protection of established sport and recreation facilities and GI23 that provides for protection and enhancement of green spaces of the Plan which reinforce this conclusion.

GI49 Protection of Existing and Established Sport and Recreational Facilities: “To protect existing and established sport and recreation facilities, including pitches, unless there is clear evidence that there is no long term need for the facility; unless the loss would be replaced by equivalent or better provision in terms of quantity or quality in an accessible and suitable location; or the development is for alternative sports and recreational provision, or required to meet other open space deficiencies, the benefits of which would clearly outweigh the loss of the former or current use.”⁷.

⁴ Ibid

⁵ Ibid

⁶ Ibid Page 315

⁷ Ibid Page 336

GI23 European Landscape Convention: *"To continue to protect and enhance landscape, including existing green spaces through sustainable planning and design for both the existing community and for future generations in accordance with the principles of the European Landscape Convention."*⁸.

The Proposed Development would result in the loss of an established sports facility. It would also fail to protect and enhance an existing green space. In both respects, it would materially contravene the Plan.

Material Contravention of 2016 and 2022 City Development Plans

DCC refused permission on the grounds of material contravention of Policy GI23 of the 2016 Plan.

*"GI23: To protect flora, fauna and habitats, which have been identified by Articles 10 and 12 of Habitats Directive, Birds Directive, Wildlife Acts 1976 – 2012, the Flora (Protection) Order 2015 S.I No. 356 of 2015, European Communities (Birds and Natural Habitats) Regulations 2011 to 2015."*⁹.

The 2022 Plan updates this policy, but leaves it functionally intact: *"GI10 Flora and Fauna Protected under National and European Legislation Located Outside Designated Areas: To adequately protect flora and fauna (under the EU Habitats and Birds Directives), the Wildlife Acts 1976 (as amended), the Fisheries Acts 1959 (as amended) and the Flora (Protection) Order 2022 S.I No. 235 of 2022, wherever they occur within Dublin City, or have been identified as supporting the favourable conservation condition of any European sites."*¹⁰.

S37(2)(b) of the Planning and Development Act, 2000 prohibits the Board from granting permission where the Council has found that a proposed development would materially contravene the Development Plan, except in specific circumstances which do not apply in this case. The Council has made such a finding, and that finding (a) remains valid under GI10 of the new plan, and (b) is reinforced by the altered zoning. Furthermore, the Developer has submitted no justification for a departure from the Plan.

Further Information

The normal power of the Board to request further information is removed by S10 of the Planning and Development (Large Scale Residential Developments) Act 2021. It is replaced in part via S11 which authorises adoption of regulations for the purpose. S13 of the Planning and Development (Large-Scale Residential Development) Regulations 2021 (S.I. No. 716 of 2021) allows limited requests for further information from a developer. Para (2) provides:

(2) Notwithstanding paragraph (a) and (b) of sub-article (1), the Board may only request further information in relation to matters of technical or environmental detail, or both, that were unforeseen at the time of the LRD opinion and the time of lodging the LRD planning application, or new matters raised through the appeal public participation process, and such requests for further information with regard to an application for LRD may only be requested once by the Board.

The rezoning of the land is not a matter of technical or environmental detail. Nor is it a matter raised through the appeal public participation process. Accordingly, a request to the Developer to address

⁸ Ibid Page 319

⁹ Op cit CDP 2016 Page 173

¹⁰ Op cit CDP 2022 Page 314

the material contravention now arising, or allowing it to argue for permission for such a contravention, is, in our view, precluded.

Open Space Provision

Policy GI25 Open Space Provision (sq. m.) per 1,000 Persons Benchmark of the 2022 Plan provides as follows: *“To ensure equality of access for all citizens to the public parks and open spaces in Dublin City and to promote more open space with increased accessibility and passive surveillance where feasible. In this regard, a city wide range of 2.5ha to 3.6ha of parks per 1,000 population benchmark for green/recreational space as set out in the 2019 Parks Strategy (or as updated) shall be a policy goal and quality standard.”*¹¹.

The Planning Report and Statement of Consistency indicates that 1.78ha of the proposed public open space will be provided with the Proposed Development and taken in charge by DCC. The Proposed Development is of 580 apartment units and a 100-bed nursing home. The Central Statistics Office states that occupancy rates of residential units in Dublin stood at 2.48 per unit in 2016. This would indicate likely occupancy of the Proposed Development, leaving out the nursing home, would be 1,438, indicating a requirement for approximately 3.75 to 5.6ha of open space. This requirement is not met.

National Planning Framework

The Proposed Development would be contrary to the objectives of the National Planning Framework¹² (NPF) Strategic Outcomes 1 and 7.

Strategic Outcome 1 Compact Growth¹³ aims to achieve greater density in residential development. Greater density means more people in less space. Each additional person has the same need for open space and recreation as the people already in an area. The way to provide increased density that is compatible with the requirement for open space is to retain existing open space while re-developing areas that are already built up.

Strategic Outcome 7 Enhanced Amenities and Heritage¹⁴ seeks to ensure enhanced recreational spaces and attractiveness. The NPF seeks to invest in and enable access to recreational facilities, to place a strong emphasis on conservation, and to protect and preserve our most fragile environments and to provide a wellbeing benefit for all. These pitches are a recreational facility. Their conservation and retention are supported by the NPF.

As an ex situ feeding site for protected birds, it has demonstrated its fragility by the ease with which the Developer has been able to destroy its value by ceasing to maintain it. The NPF supports the Z9 zoning of the site.

Birds Directive

Directive 2007/149 on Wild Birds aims to protect all wild birds. A2 provides that *“Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level*

¹¹ Op cit CDP 2022 Page 322

¹² Project Ireland 2040 | Building Ireland's Future | National Planning Framework

¹³ Ibid Page 14

¹⁴ Ibid Page 15

which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.”.

The first part of A4(4) relates to protected sites. The final sentence, on the other hand, provides that *“Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”.*

The Proposed Development lands are outside a Special Protection Area (SPA) but were, up to and through the winter of 2017-18, a foraging habitat for Light Bellied Brent Geese, Curlew, Oystercatcher, Black-Tailed Godwit and Black-Headed Gull, amongst other birds. The action or inaction of the Developer, in allowing the grass to grow on the site, has led to the deterioration of that habitat to the point that, instead of providing foraging for up to 1,400 Light Bellied Brent Geese, as well as Curlew, Oystercatcher, Black-Tailed Godwit and Black-Headed Gull, it now provides none.

The State has failed to take any action to avoid that deterioration, and has failed to take any action to remedy it, in spite of being called upon to do so. This, in our view, constitutes a breach by the State of its obligations under A4(3) of the Treaty on European Union.

In this respect, we reiterate and adopt the submission of Birdwatch Ireland to DCC dated 10 October 2022, but apply it to the second part of A4(4) of the Birds Directive, relating to areas outside protected sites.

We also adopt the DCC Parks Department Report, but apply it also to A4(4). The Council has sought to avoid further deterioration of the feeding habitat for wintering birds, in accordance with Development Plan objectives, and to maintain the possibility that that habitat can be restored. The Board should support that action by the Council. It is submitted that it is not open to it not to do so.

Appropriate Assessment

We do not have access to the expertise of a professional ornithologist to assess the Natura Impact Statement prepared by Enviroguide and submitted with the application. We adopt the submission of Birdwatch Ireland and the report of the DCC Parks Department in this respect. It is submitted that the issues raised by both parties are significant and important. They relate to a specialised area where general planning expertise will not be sufficient to enable a critical and scientific evaluation to be carried out of the Developer’s submissions.

It is clear from the 2018 Scott Cawley NIS, at Appendix 1 to the current NIS, that the site of the Proposed Development was previously used as an ex situ feeding site by a significant number of wintering birds from the nearby SPA sites.

Year: 2016-17	Peak usage
Light Bellied Brent Geese	1,530
Curlew	117
Oystercatcher	28
Black-Tailed Godwit	400
Black-Headed Gull	67

In the case of the Brent Geese and Godwit, the numbers exceeded the threshold of national significance for the species. If more than 1% of the national population uses a site, the site is nationally important. If more than 1% of the international population does so, the site is internationally important. The site was internationally important for Brent Geese and nationally important for

Godwit. The domestic population of curlew is critically endangered but the wintering population is not. It is not known whether the curlew wintering in the area include members of the national population, as well as wintering visitors.

At the time the Scott Cawley NIS was prepared, the 6 St Paul's pitches were a single site. In the summer of 2018, the Developer separated its land (5 pitches) from the 1 remaining St Paul's pitch. The Developer ceased cutting the grass on its land. The grass naturally grew, resulting in a sward height that was greater than that required by foraging geese. The Developer has never suggested that this was anything other than a deliberate action on its part, intended to eliminate the use of the site as an ex-situ feeding site. That was certainly the effect of its action, or inaction.

It is submitted that this action or inaction constituted the commencement of a project by the Developer for which an Appropriate Assessment was required, but had not been carried out. It is submitted that substitute consent is required pursuant to the 2000 Act.

From that time onwards, no geese or other foraging species have been recorded on site. Enviroguide records numbers of birds on the remaining one school pitch, but accepts that there have been no birds on the site of the Proposed Development since then.

Enviroguide explains that it stopped carrying out bird surveys of the site because of the change in "management" of the pitch. It says in Section 7.1 of the Natura Impact Statement (NIS) that *"The reason for this designation was due to the change of habitat at these sites since the 2018/19 season. During previous wintering bird surveys in 2015/16 and 2016/17, the Development Lands remained as amenity grassland with regular mowing, analogous to St Paul's School Pitch. This management changed for the 2018/19 season, where no mowing was carried out from August 2018 to present, resulting in an increased sward height within this area."*¹⁵.

It explains at 5.2.3, 5.2.4 and 5.2.5 of the NIS that the lands were unsuitable for geese due to high sward at the time of the survey. This is an acknowledgement that the failure to cut the grass renders the site unsuitable as an ex situ feeding site. The importance of sward height in selection of sites to survey is covered at 7.2.1.

Enviroguide comments at Section 7.2.4 that covid 19, *"reduced the feeding opportunities for LBBG at some sites where an increase in human activity had occurred."* This included St Anne's Park, which adjoins St Paul's. St Paul's is a site to which the public does not have access other than when training is going on. As such, it provides or used to provide undisturbed foraging opportunities. The loss of access to these foraging opportunities was particularly significant at a time when other open spaces were subject to particular pressure.

It appears, at 5.2.4.3 of the Enviroguide NIS, that Brent Geese have begun to use Phoenix Park in large numbers since 2021 (daily tallies of 1,400, 2,000 and 600). Enviroguide assert that Brent Geese had a good reproductive year in 2019, and further assert that this shows that the displacement of geese from the site had no impact on conservation status. This is not accepted. As Birdwatch points out in its submission, the fact that geese do well in one year does not lead to the conclusion that they have not been adversely affected by the change to their foraging sites. Quality of sites and quality of foraging have an impact, and that impact may well be felt more in a year when migration conditions and breeding conditions are harsh, than in a good year. Birds that have foraged less well over the

¹⁵ Natura Impact Statement For Proposed Mixed Use Development At Lands East Of St Paul's College, Sybil Hill Road, Raheny, Dublin 5 August 2022 Enviroguide Consulting

winter will be less well able to make the migration journey to northern Canada, and when they get there may be less successful at breeding.

In the Developer's appeal submission, Enviroguide consistently disputes the queries posed by the Council's Parks Department, on the basis that the Parks Department has not adduced evidence to undermine its submission. This is not a correct approach in law: it is for the Developer to produce information to satisfy doubts identified by the Council, or on appeal by the Board. The Council's queries remain, in our view, unanswered, or are answered in a simplistic manner.

The Enviroguide submission on the appeal cites Lewis, who stated that *"the abundance of these foraging sites within the Dublin Bay catchment is likely a factor in the increased numbers in Dublin Bay in recent years."* Enviroguide comments that *"The NIS has demonstrated that there is no carry over effects due to the loss of the proposed development site, there is an even distribution of birds throughout the network of ex-situ feeding sites over four survey seasons, and there is no evidence to suggest that the Dublin Bay population of LBBG is not healthy."*

It appears to us that this comment is beside the point. The Developer's hypothesis appears to be that one can take foraging sites out of the network, even preferred foraging sites, right up to the point at which the available foraging sites are completely full, but without knowing when that will be. The Developer is throwing the burden of proof onto the Council to prove an effect, whereas the correct rule is that the Developer must prove absence of adverse effect. As Birdwatch pointed out, birds may be more stressed because they are crowded into a smaller area, even if there is still enough space for all. Enviroguide also does not consider whether there is enough grass available on the sites now being used, or whether the birds are more readily disturbed, or whether they are having to commute further to feed, and if so, if this is affecting their fitness to travel and breed.

Enviroguide claims (p6) that the loss of a single site will not *"have any significant effect"* on the population trend. But this argument is invalid, first because it treats all sites as interchangeable, without addressing the argument of Birdwatch that some sites are preferred and may confer a survival advantage over other less favoured ones, and second because this argument can lead to a race to the bottom, with owners competing to develop their site while capacity remains.

Enviroguide criticises the Council's conclusion that there is uncertainty as to whether population of Brent Geese is stable or increasing. But the basis for the criticism is that the Council does not have evidence. That, however, was precisely the Council's point: it did not have sufficient evidence; it is for the Developer to provide that evidence.

Enviroguide returns repeatedly to a supposed contradiction in the Council's questions, that the Council assumes a maximum population of 7,000 geese in Dublin, but then says the short to medium term trend is that the population is declining. There is no contradiction in this approach. The Parks Report simply states that there is a lack of confidence that numbers are stable or increasing by reference to the population high of 7,000. This is a finding that there is uncertainty. It then goes on to raise further questions against the background of that maximum population figure, even if the number of geese has since declined. There is no contradiction here, merely a use of an uncertain figure in the absence of a better one.

The assertion of a contradiction is used as basis to criticise the Parks Report without engaging with its substance. For instance, the Parks Report noted a peak count of 1,530 geese at the site in 2016-17, and that 76% of visits recorded a nationally important number of geese present on site. There are no geese there now. Instead of addressing this, Enviroguide criticises the Council's mention of the peak number of geese recorded in Dublin.

Enviroguide asserts that Tables 4, 5 and 11 demonstrate that geese have successfully relocated. This appears to be incorrect: Table 4 gives the peak number recorded at each site; Table 5 summarises the number of sites with peak numbers above certain levels; and Table 11 shows the highest peak counts. It seems to us that the evidence presented is not capable of justifying the conclusions drawn, and this was also the Council's view.

The Council criticises Enviroguide for providing raw data, and conclusions as to peak counts at sites, but not analysing the data in any greater detail. We believe this criticism is well founded: the data is capable of identifying what sites were used frequently, what the average numbers of birds present were, and the number of times on which birds were present. The Developer is concealing the information by simply putting forward the data in a raw form that defies analysis.

Enviroguide notes that the Parks Report concludes, with reference to the new feeding site in the Phoenix Park, that *"At over 8km from North Bull Island the energetic demands of flying to this site may far exceed their value. That the geese may now need to travel this distance to forage is actually a worry."* Enviroguide replies: *"We are at a loss to understand this statement, particularly if the suggestion is that the discovery of an additional resource is a cause of concern" Given that the geese have been known since 2008 to travel up to 12-15 km from the roost site (Benson p567) a distance of 8km would not suggest any change in behaviour since then."*

It is submitted that this is wilfully obtuse. The concern is that average or usual commutes are becoming longer, resulting in use of more energy, which may reduce weight gain for migration, which may in turn reduce fitness to breed on arrival. A goose might generally travel 1.4km from North Bull to St Paul's but make a 15km flight once a week or so without difficulty – making an 8km trip twice a day on the other hand may represent a considerable energy cost.

It is submitted that the above issues, as put forward by Birdwatch and the Parks Department, the replying submissions in the appeal, and the underlying NIS all require expert assessment. Without the application of sufficient expertise to assess all matters, the EIA and Appropriate Assessment will fail to meet the required legal standard.

Overall, it is submitted that the current state of the NIS and appeal is not sufficient to eliminate scientific doubt. Insofar as Enviroguide asserts to the contrary, the evidence is insufficient to justify the conclusions.

Masterplan Approach

A Masterplan for the Z15landbank has been included with the current application. It is the fourth such Masterplan for these lands.

The first¹⁶ of these is the only Masterplan that has been part of an application that has secured planning permission and it was submitted with application 4242/15. It refers to the 12ha site owned by the Vincentians as comprising the swimming pool site, Sybil Hill House and grounds, the school's land and the playing pitches.

¹⁶ Masterplan for Future Structure and Development of Lands at St Pauls College Sybil Hill Road Raheny for Vincentian Order. September 2015. Simon Clear and Associates.

The second Masterplan¹⁷ submitted with SHD application 300559-18 deals with the 11.2ha site, reducing the area covered by the Masterplan on the basis that the school's swimming pool site had been approved for development.

The third Masterplan¹⁸ was submitted with SHD application 305680-19. It notes that the Z15 area covers both sides of Sybil Hill Road and goes on to say that this Masterplan "*covers all the lands in the original St. Paul's campus. The area is less than 12ha.*"¹⁹ It then excludes the school's swimming pool site which was under development at that stage.

It is worth noting that each of these Masterplans excluded the lands sold by the Vincentians in 1981 for the development of The Meadows, Howth Road which were part of the original St. Paul's campus.

The fourth and most recent Masterplan²⁰, submitted with LRD 6002/22, purports to deal with the entire Z15 landbank incorporating both sides of the Sybil Hill Road²¹.

The inclusion of the lands on both sides of Sybil Hill Road increases the overall amount of land being considered thereby reducing the percentage of land being given over to residential development under the current application. The subject site is described as 60,752 sqm in the fourth Masterplan but as 6.16ha in earlier Masterplans. If the Z15 landbank is taken as the original St. Paul's campus, excluding The Meadows, the playing pitches account for 52% of the land bank. However, when the Z15 lands on the other side of Sybil Hill Road are taken into account this figure is reduced to 40%. In either case the subject site is the main body of open land in the entire Z15 land bank.

The rationale for this expansion of the lands allegedly being covered by the Masterplan is not clear. This is not a matter that has been criticised in any of the DCC or ABP Planners' reports on previous applications. It is also worth noting the statement in the first Masterplan that "*The lands zoned Z15 on the western side of Sybil Hill Road are owned by a separate institutional body and are already fully developed at significant scale and are therefore, not included in this Masterplan.*"²² Furthermore, the Introduction for the current Masterplan states that "*The Institutional Owners are happy to confirm that the main institutional and community uses on the lands, including space for any necessary expansion of such uses will be maintained and improved in the future by Orsigny/The Vincentian Order.*"²³ If this expanded land area is the appropriate basis for considering the current application, then the Masterplan fails to give any indication of any development proposals that the other land owners may have as they do not appear to have been consulted or considered under this Masterplan.

Page 20 of the Masterplan²⁴ presents a Summary of key areas, density and site coverage. These figures are not, in our view, an accurate reflection of the position because they are based on the revised interpretation of the Z15 landbank used in this application. It is essential that the Planners Report clearly establishes the appropriate area to be used in order to calculate key ratios of density, site coverage etc. and that they ensure the standards set down in the CDP are met.

¹⁷ Z15 Institutional Lands, Landuse Disposition, Masterplan, St Paul's College and Sybil Hill House, Raheny. December 2017. Simon Clear and Associates.

¹⁸ Z15 Institutional Lands, Landuse Disposition, Masterplan, St Paul's College and Sybil Hill House, Raheny. May 2019. Simon Clear and Associates.

¹⁹ Ibid Page 4

²⁰ Foxlands, Raheny: Masterplan Approach for Redevelopment, 31.08.2022, Hawkins\Brown with Brady Shipman Martin

²¹ Ibid Page 9

²² Op cit Simon Clear and Associates September 2015, Page 3

²³ Ibid Page 2

²⁴ Op cit Brady Martin Shipman

The Planner's Report should address the Masterplan issue comprehensively and should address whether the current Masterplan, given the shortcomings outlined above, is sufficiently robust to base their decision.

New Application for Senior Living Facility

The current Masterplan submitted with this LRD application states that *"The Masterplan relates to all of the lands in the original St Paul's College campus that are subject to the Z15 zoning."* and that *"The Development Plan requires a single Masterplan vision for the use of the lands within the area subject to the zoning, irrespective of the current ownership structure."*²⁵. However, it fails to make any reference to the recent application (Ref: DCC 5155/22) for a Senior Living Facility on the Sybil Hill House site in the ownership of the Vincentians/Orsigny.

Again, we would ask the Planner to address whether the Masterplan is acceptable and can be relied upon given this omission.

EIA: Documents Not Available for Comment

The NIS and other documents submitted are based on proprietary standards which were not made available for public inspection. The documents in question include (but are not limited to) the following:

- CIRIA, (2001), Control of Water Pollution from Construction Sites, Guidance for Consultants and Contractors;
- Construction Industry Research and Information Association (CIRIA) Environmental
- Good Practice on Site (C650), 2005;
- BPGCS005, Oil Storage Guidelines;
- CIRIA 697, The SUDS Manual, 2007;
- UK Pollution Prevention Guidelines (PPG) UK Environment Agency, 2004;
- Construction Industry Research and Information Association CIRIA C648: Control of water pollution from linear construction projects: Technical guidance (Murnane et al. 2006).

These documents are not included with the application, do not form part of the public consultation process, and are not before the Board to form the basis for an EIA and AA. (Only the Environment Agency Guidelines are available free online.) It is necessary, in order to comply with fair procedures and in order for the Board to consider relevant information, that they should be submitted and that public comment should be invited in relation to them. This is further necessary for the purposes of carrying out a valid EIA and Appropriate Assessment.

Similarly, the 2020 New Apartment Guidelines state that "Planning Authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the 2 guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition)". However, subsequent to release of 2020 Apartment Guidelines, this BRE Guide has been updated (BR 209 3rd Edition, 2022). We do not have access to this updated document, and it is not included with the application for comment. Accordingly, an EIA and Appropriate Assessment cannot be correctly carried out.

²⁵ Planning Report & Statement of Consistency, Lands to the East of St Paul's College, Sybil Hill Road, Raheny, Dublin 5, Brady Shipman Martin, September 2022, Page 28

It is no response to say that members of the public could obtain these documents. Prices for some of them (in pounds sterling) are set out below:

- CIRIA, (2001), Control of Water Pollution from Construction Sites, Guidance for Consultants and Contractors; (£130)
- Construction Industry Research and Information Association (CIRIA) Environmental
- Good Practice on Site (C650), 2005; (£170)
- 'Site Layout Planning for Daylight and Sunlight' (3rd edition) (£75)

The cost of obtaining these documents for the purposes of evaluating the application against them is prohibitive, and defeats the objective of public participation in the decision-making process. This is relevant material on which public consultation is required.

We are not in a position to obtain these documents in order to verify that the Developer has in fact complied with them as stated.

Appeal

We note that an Appeal, Ref 315179, is recorded as lodged with ABP on the 23rd November 2022. Later that day it was deemed invalid. No reason has been given for this decision and the appeal documentation is not available on line. The following day, November 24th a second appeal under Ref 315183, and to which these observations relate, was lodged. We would ask the Planner to satisfy themselves that the correct procedures were followed in the matter and that it was in fact permissible to lodge the second appeal.

We would also like to draw the Planners attention to the fact that while there are only four weeks within which to submit observations on an appeal, the appeal documents in this case were not made available until December 1st, one week after they were lodged.

Conclusion

In our view the Board should, indeed must, refuse permission because the proposal:

- does not comply with zoning for these lands, whether it is considered as Z15 under the old CDP or Z9 under the new CDP;
- would materially contravene the CDP;
- would breach A4(4) of the Birds Directive;
- would exacerbate an ongoing breach of that Directive;
- has failed to correctly apply the precautionary principle in respect of a number of different protected species;
- the NIS submitted is not capable of supporting the conclusion that there would be no adverse effect on the integrity of the nearby SPA sites; and,
- fails to take full regard of the Judge Humphrey's ruling of 7th May 2021, JR No.725.

Yours faithfully



Deirdre Nichol
Chairperson