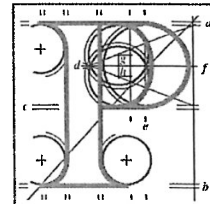


Our Case Number: ABP-315183-22

Planning Authority Reference Number: LRD6002/22S3



**An
Bord
Pleanála**

Larry and Celia Stanley
9 Vernon Drive
Clontarf
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,

PPED

David Behan
Executive Officer
Direct Line: 01-8737146

LRD40 Acknowledge valid observer submission

**Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost**

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

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

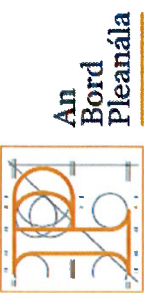
64 Marlborough Street
Dublin 1
D01 V902

Lodgement Cover Sheet - LDG-060049-22

LRD 610
101554

315183

LRD 6002/2253



Details

Lodgement Date	18/12/2022
Customer	Larry and Celia Stanley
Lodgement Channel	Web Portal
Lodgement by Agent	No
Agent Name	
Correspondence Primarily Sent to	
Registered Post Reference	

Lodgement ID	LDG-060049-22
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-046940-22
Related Payment Details Record	PD-046830-22

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

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.foxlandsd2022.ie.
Applicant	
Additional Supporting Items	Yes



An
Bord
Pleanála

Large-scale Residential Development Appeal Observation

Online Reference
LRD-OBS-006080

Online Observation Details

Contact Name
Laurence Stanley

Lodgement Date
18/12/2022 20:23:54

Case Number / Description
315183

Payment Details

Payment Method
Online Payment

Cardholder Name
Laurence Stanley

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_3MGTOhB1CW0EN5FC0Zj3Xff6

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

Larry & Celia Stanley
9 Vernon Drive
Clontarf
Dublin 3

18th December 2022

An Bord Pleanála
64 Marlborough Street
Dublin 1

Re: Observation on ABP Case Reference: LH29N.315183

Re: LRD Appeal by 'Raheny 3 Limited Partnership' against Dublin City Council Decision to Refuse Permission for Planning Reference LRD6002/22-S3

A Chara,

We are writing in relation to the above planning appeal submitted by 'Raheny 3 Limited Partnership' Ltd (i.e. Marlet Property Group, AKA Crekav) regarding Dublin City Council's refusal of 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. To this end, we are lodging this observation with the requisite fee of €50.

In addition to the original objection we submitted to Dublin City Council, we consider the following eight points are grounds to uphold Dublin City Council's decision to refuse planning permission for this scheme.

1. **Under the current City Development Plan (2022-2028) the land is zoned Objective Z9 Amenity/Open Space Lands/Green Network "To preserve, provide and improve recreational amenity, open space and ecosystem services", and therefore a large residential development is not permissible.**
2. **Dublin City Council refused permission for LRD6002/22-S3 on the basis of the Precautionary Principle as the "proposed development would therefore materially contravene policy GI23 three of the Dublin City Development Plan 2016 to 2022 for the protection of European sites".**
3. **The planning application 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 from the Vincentian Order to the applicant does not change the zoned and established use.**
4. **These are not residential lands: the Dublin City Council RZLT (Residential Zoned Land Tax) map prepared for the purposes of identifying land that satisfies the relevant criteria and is to be subject to the residential zoned land tax does not show the land as either "Residential Zoned land" or "Vacant /Idle, Mixed Use Zoned land".**
5. **The Z15 zoning requirement to submit a masterplan for development on Z15 lands (as they were prior to 14/12/2022) has not been complied with because application Ref No. 5155-22 for Sybil Hill House, subsequently submitted to DCC, shows that the masterplan submitted for LRD6002/22-S3 is not the actual masterplan that the St Paul's land owners and developers are pursuing.**

6. The Z15 zoning previously applied to the lands (prior to 14/12/2022) was intended to protect the amenity and biodiversity use of St Pauls playing fields, but the strength of the zoning was undermined in an unforeseen way by a case taken by the Sisters of Charity against Dublin City Council [*Christian v. Dublin City Council* (No. 1) [2012] IEHC 163, [2012] 2 I.R. 506.] forcing it to amend the Z15 zoning on religious and institutional lands to allow for "consideration of residential development". Subsequently the Vincentian Order and Marlet Property Group tried to use this unforeseen change to illegitimately alienate the established use of the land -by the community for sports, and by protected species for grazing- in order to make windfall profits. This cannot be permitted.
7. 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 either the previous Z15 zoning under the 2016-2022 City Development Plan, nor the current Z9 zoning under the 2022-2028 City Development Plan.
8. Despite the recent efforts of the Vincentian Order and Marlet Property Group to alienate the lands, they are an established part of St Anne's Park through public use and as evidenced on maps such as the 1971 Dublin Development Plan, the Dublin Street Atlas and Guide (4th ed) 2003, the OSI Dublin Street Map 2008 and the Dublin Bay Biosphere Map.

Please see further details below in support of each of the eight points:

1. Under the current City Development Plan (2022-2028) the land is zoned Objective Z9 Amenity/Open Space Lands/Green Network "To preserve, provide and improve recreational amenity, open space and ecosystem services", and therefore a large residential development is not permissible.

14.7.9 Amenity/Open Space Lands/Green Network – Zone Z9

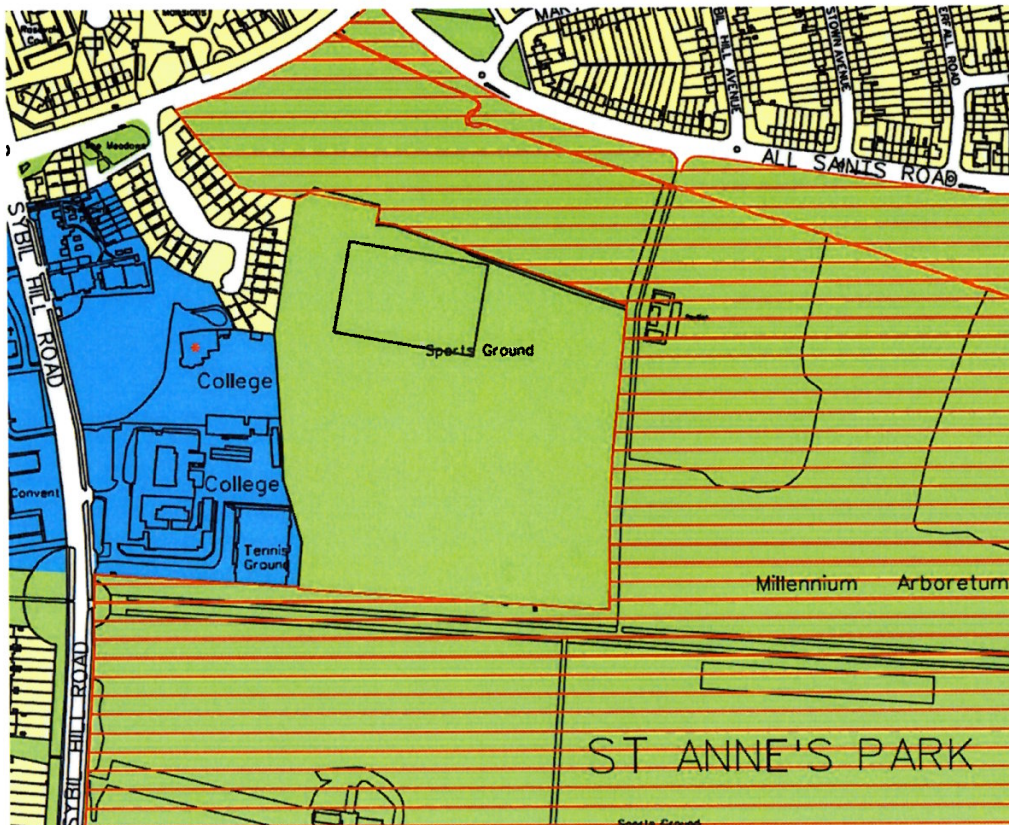
Land-Use Zoning Objective Z9: To preserve, provide and improve recreational amenity, open space and ecosystem services.

Z9 lands are multi-functional and central to healthy place-making, providing for amenity open space together with a range of ecosystem services. They include all amenity, open space and park lands, which can be divided into three broad categories of green infrastructure as follows: public open space; private open space; and, sports facilities.

Zone Z9 Amenity /Open Space Lands /Green Network _ _ _ _ _



See current development plan map overleaf:



Please also note that the land continues to be designated as a "sports ground" on the development plan map, as per previous development plans and the established use.

2. **Dublin City Council refused permission for LRD6002/22-S3 on the basis of the Precautionary Principle as the "proposed development would therefore materially contravene policy GI23 three of the Dublin City Development Plan 2016 to 2022 for the protection of European sites".**

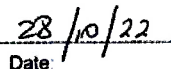
LRD6002/22-S3 P4878

development and I therefore decide to REFUSE PERMISSION under the Planning and Development Acts 2000 (as amended) for the reason (s) stated below.

REASON (S)

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. Any assessment of the impacts of the proposed development on the site integrity of the Natura 2000 sites in Dublin Bay under the EU Birds and Habitats Directives cannot be made in the absence of data and the precautionary principle applies. It is considered that the proposed development would, therefore, materially contravene Policy GI23 of the Dublin City Development Plan 2016-2022 for the protection of European sites, and hence would be contrary to the proper planning and sustainable development of the area.


Mary Conway
Deputy City Planner


Date

To whom the appropriate powers have been delegated by order of the Chief Executive, Dublin City Council dated the 12th day of October 2022.

DCC recognises that the applicant cannot be rewarded with any grant of planning permission for interfering with the largest ex-situ feeding site for Brent Geese -that has been demonstrated to be of both national and international importance- which supports the Bull Island SPA and SAC and the wider Dublin Bay Biosphere.

The developer has interfered, and continues to interfere with, an identified, established EU habitat in breach of the "precautionary principle", having removed the maintained grass football pitches and having (partially) erected hoardings despite no planning permission ever being secured to change the use of the lands. Agents of the Irish state cannot reward this attempt to artificially disrupt the established use of the land as a habitat for protected bird species, without being in breach of the European Habitats Directive.



Photo of Brent Geese attempting to feed while heavy plant belonging to Marlet Property Group erects unauthorised hoarding on the St Paul's playing fields in March 2020.

Consequently the appeal cannot be upheld without breaching not just the City Development Plan, but also the European Habitats Directive.

3. **The planning application 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 from the Vincentian Order to the applicant does not change the zoned and established use.**

Judge Humphreys overturned An Bord Pleanála's previous grant of permission for a similar large residential development (at the time a "Strategic Housing Development") on the playing fields at Judicial Review in 2021 (Ref: ABP-305680-19). The following

extracts from the judgement are pertinent to the current appeal because it has been established that the applicant is subject to the requirements of the development plan and cannot change the established, zoned, land use merely by expelling football clubs and interfering with the identified protected species feeding habitat:

7. These lands were zoned Z15 "to protect and provide for institutional and community use". The zoning map B notes the lands as including a "sports ground". The developer, presumably in the belief that it would improve the prospects for residential development, terminated the use of the five pitches by sports clubs in late 2017 and ceased cutting the grass on the pitches in August 2018.

And,

The irrelevant consideration

31. The first and most obvious problem is that change in ownership does not in itself alter the interest to be protected by the zoning: see *per* Simons J. in *Redmond v. An Bord Pleanála* [2020] IEHC 151 (Unreported, High Court, 10th March, 2020), at paras. 55 and 56. Simons J said that "[t]his established use and designation is not lost by dint of a transfer of ownership. Rather, it remains until such time as planning permission is granted for an alternative use, such as, for example, residential use." I agree, and apply that decision here.
32. What is particularly irrelevant on the facts here about the change of ownership is that that had already occurred when the development plan was adopted. The planning map is in a way even more important to this case than the Z15 zoning because it identifies that the site in question includes a sports ground, and did so notwithstanding that the ownership change had already occurred at that point.

And,

The non-expert reader would not read the plan as referring only to de facto use

37. On the first point, it seems to me that where the Z15 zoning is speaking of an existing use or "existing functional open space" it is talking about existing uses in the sense that Simons J. is referring to in *Redmond v. An Bord Pleanála*, namely a previously established use which enures for the benefit of the land until such time as a planning permission for a new use is granted. Even the non-expert reader could appreciate that point. There is a fundamental distinction between cessation of a use in practice at a particular time and the formal abandonment of a use on a permanent basis, which in a situation like this would normally arise where planning permission for some inconsistent use or development was granted. Thus, it seems to me that the inspector had erroneously had regard to the simple *de facto* situation on the ground which in my view is incorrect as a matter of law.

The applicant has no automatic right to a grant of planning permission for a large residential development on amenity land just because they have bought it and expelled its established uses:

81. That submission seems to be based on a misconception that there is a right to development. The notice party's submissions starting point was "I can do what I want with my land" absent statutory interference. But that is a false premise. The argument was made that one can challenge a zoning objective on the ground of disproportionate interference based on *Christian* at pp. 561 to 562. However, proper planning and sustainable development has an objective content and thus proportionality as such is not necessarily the correct metric to consider it with. If a particular development or type of development is not in accordance with proper planning and sustainable development, then permission should be refused, either on an individual basis or backed up with preclusion of any inappropriate category of development in the terms of the zoning. That is a "yes" or "no" outcome - proportionality does not really come into it.

The applicant, as the current land owner, must abide by the Development Plan, which does not permit their proposed development:

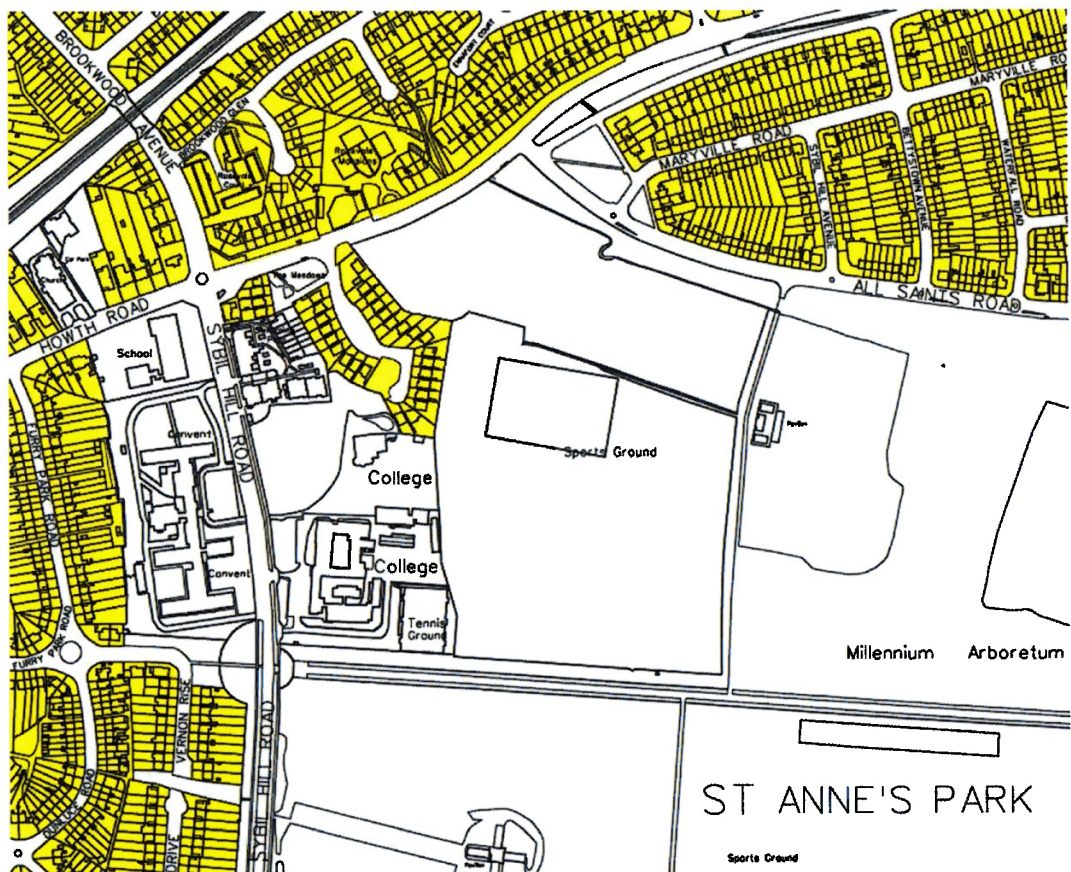
84. Without taking from the principles of land law, we are all, at best, leaseholders on Planet Earth. All property must be held with some view to the benefit of society as a whole and of future generations, and is not to be dealt with as one sees fit. Even the most self-made Ayn-Randian entrepreneur draws enormous benefits from her membership of society – whether directly, or through the benefits provided by the State to her workers, contractors, tenants and purchasers, that ultimately facilitate the entrepreneur's economic well-being. What society asks in return is, among other things, that there should be no development other than that which is proper, sustainable and lawful. To argue that society's endeavours to ensure that outcome (through development plans, for example) have to be read narrowly and restrictively, while the individual property owner can take the full advantage of societal provision both direct and indirect, is to entirely distort the social contract. Insofar as law in general and development plans in particular are part of the People's benefit under that contract, they are terms for the welfare of all, not penal clauses to be read *contra proferentem*.

4. **These are not residential lands: the Dublin City Council RZLT (Residential Zoned Land Tax) map prepared for the purposes of identifying land that satisfies the relevant criteria and is to be subject to the residential zoned land tax does not show the land as either "Residential Zoned land" or "Vacant /Idle, Mixed Use Zoned land".**

(See RZLT map overleaf)



The current draft Dublin City Council RZLT map shows the St Pauls Playing fields in the bottom right hand corner, coloured white as non-residential land.



Extract from the draft DCC RZLT map showing the St Pauls Playing fields coloured white which is beyond the scope of lands for the Residential Zoned Land Tax, which are coloured yellow and red.

**Land In scope of the Residential Zoned Land Tax,
shown In Yellow and Red**

Residential Zoned Land_____



Vacant/Idle, Mixed Use Zoned Land_____



As these are not residential lands, they are unsuitable for a Large Residential Development.

5. The Z15 zoning requirement to submit a masterplan for development on Z15 lands (as they were prior to 14/12/2022) has not been complied with because application Ref No. 5155-22 for Sybil Hill House, subsequently submitted to DCC, shows that the masterplan submitted for LRD6002/22-S3 is not the actual masterplan that the St Paul's land owners and developers are pursuing.

There is a huge discrepancy between the masterplan lodged to support the applicant's proposed development on the St Paul's playing fields (Ref: LRD6002/22-S3) and the application for the adjoining Sybil Hill House lands (Ref 5155-22) lodged by Tetrarch to Dublin City Council on Tuesday 01/11/2022, just two working days after DCC's decision (to refuse) LRD6002/22-S3 on Friday 28/10/2022.

The application for Sybil Hill House (Ref 5155-22) does not include a masterplan, and such a development was never indicated on any of the previous masterplans.

The proposed site plan by Darmody Architects submitted for Ref 5155-22 is shown below -the St Pauls playing fields are immediately to the east of the Sybil Hill House lands:



The application for Sybil Hill House (Ref 5155-22) calls into question not just the accuracy, but also the validity of the masterplan submitted to support and legitimise LRD6002/22-S3 and demonstrates that the Vincentian Order and its associated developers (including Marlet Property Group) are attempting to subvert the City Development Plan by project-splitting and evading Z15 zoning requirements.

The Dublin City Development Plan 2016-2022 (which was in force at the time of submission of both LRD6002/22-S3 and Ref 5155-22) states that:

The masterplan, which may necessitate a variation, shall set out a clear vision for the lands zoned Z15, to provide for the identification of 25% of the lands for open space and/or community facilities (instead of the 10-20% public open space provided for in earlier in this chapter. This requirement need not apply if the footprint of the existing buildings exceeds 50% of the total site area of the institutional lands.

The masterplan must incorporate landscape features which retain the essential open character of the lands zoned Z15. It must also ensure that the space will be provided in a manner designed to facilitate potential for future public use and protect existing sporting and recreational facilities which are available predominantly for community use.

The 25% public open space shall not be split up, unless site characteristics dictate otherwise, and shall comprise mainly of soft landscaping suitable for recreational and amenity purposes and should contribute to, and create linkages with, the strategic green network.

No accurate clear vision for the St Pauls Z15 lands has ever been presented to the public through the democratic planning process as the masterplans previously submitted have not shown any residential development within the curtilage of Sybil Hill House; instead it has consistently been shown undeveloped with the historic house remaining sited in its established verdant setting. Moreover, Orsigny / the Vincentian Order has made what can now be seen to have been misleading claims that there is to be no change to the institutional use of the house: As part of the planning application on the St Paul's playing fields (Ref: LRD6002/22-S3) the first page of the "Foxlands Raheny Masterplan Approach for Redevelopment" (For Marlet Property Group by Hawkins/Brown with Brady Shipman Martin) states:

This Masterplan has been prepared in response to the requirement of the Z15 zoning of the lands at St. Pauls College, Sybil Hill Road, Raheny Dublin, to describe the vision for the future use of these lands.

The retained institutional lands are currently used for Secondary Education and also accommodate the Provincial Headquarters of the Vincentian Order.

It is clearly set out in this Masterplan that the Institution will be maintained and improved into the future.

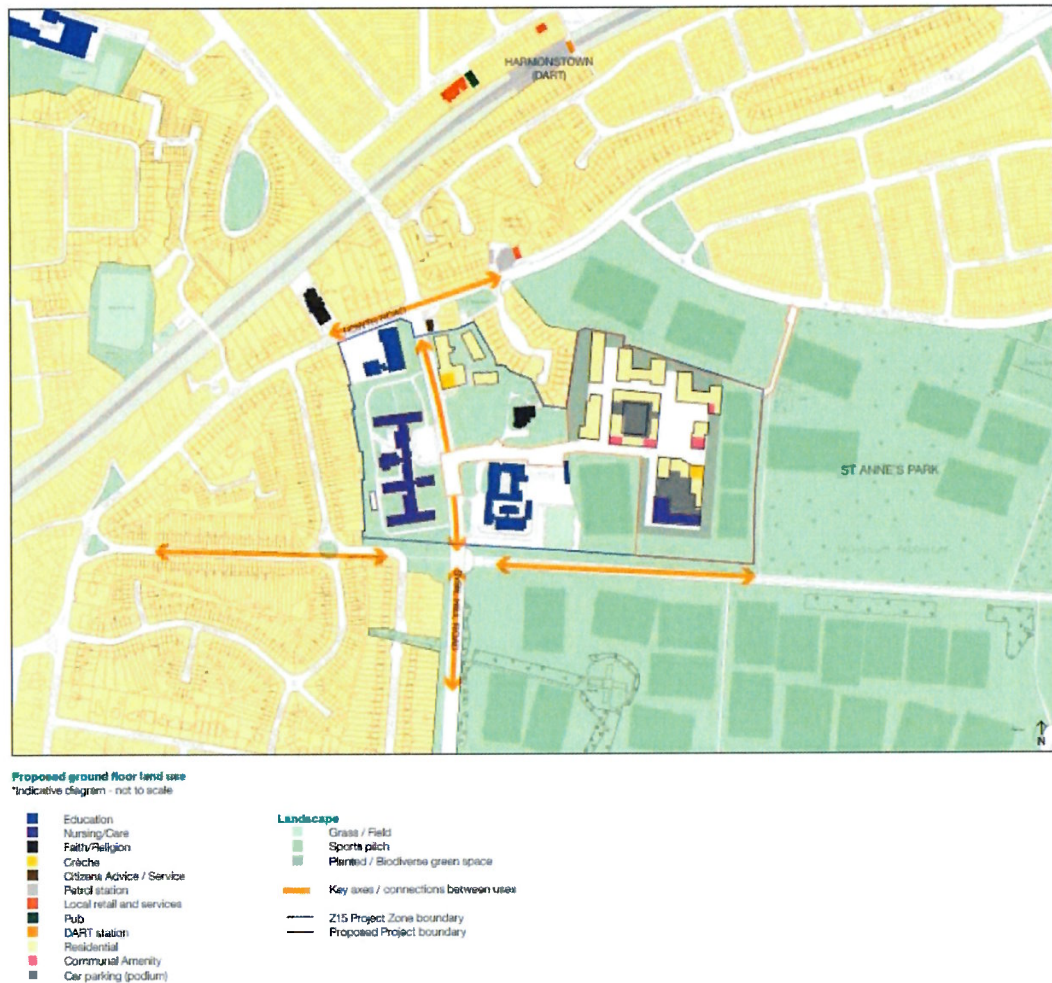
The Masterplan is prepared to give an overview of the future use of the lands zoned Z15, To Protect and Provide for Institutional and Community Uses. The Masterplan describes future intended land uses that are 'Permitted in Principle' and 'Open for Consideration' under the provisions of the Dublin City Development Plan 2016 – 2022. 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.

On page 23 of the same document the following statement is made:

St. Paul's College and Vincentian Order remains on the wider Z15 land holding therefore securing the main institutional and community use on the lands.

Rehoming the few remaining Vincentian Order members in new apartments, as proposed under Ref 5155-22, cannot be claimed as "securing the main institutional

and community use on the lands", which LRD6002/22-S3 is basing part of its argument for development on.



On Page 21 of the same document the above masterplan of "Proposed Ground Floor Land Uses" clearly shows Sybil Hill House (coloured black) retained and undeveloped as "Faith/Religion" use with no reference made to the decanting and apartment scheme proposed in the planning application lodged with DCC just two working days after the decision was made to refuse the applicant's scheme on the St Pauls Playing fields.



Proposed green space and access (above)
 Indicative diagram - not to scale

- Unrestricted / Public access (no fences or visible boundaries)
- Restricted access (within private boundaries/ fenced off)
- Inaccessible
- Sports pitches (publicly accessible)
- Sports pitches (private with occasional community access)
- Fences / boundary walls
- Local routes leading to strategic green network
- Drawings / existing entrances
- Z15 Project Zone boundary
- Proposed Project boundary

On Page 22 of the same document the above masterplan of "Proposed Green and Open Spaces" clearly shows Sybil Hill House (coloured white) retained in its verdant setting with no reference made to the decanting and apartment scheme proposed in the planning application lodged with DCC just two working days after the decision was made to refuse the applicant's scheme on the St Pauls Playing fields.

Apart from making very clear that the masterplan submitted in support of LRD6002/22-S3 is untrue, it raises the question: Did the Vincentian Order and Tetrarch hold off on their application for a senior citizens scheme in case it jeopardised Marlet Property Group's own senior citizen scheme which was included in LRD6002/22-S3 in an attempt to demonstrate a community use on the lands in lieu of the 6 playing fields Marlet Property Group want to replace with residential apartments? The applicants claims to be retaining a degree of community and institutional use on the lands are very very thin.

The failure of the institutional landowner (Orsigny / The Vincentian Order), and the developers they have done land and development deals with (MKN, Crekav / Marlet Property Group / Raheny 3 Partnership, and Tetrarch) to present a factual and accurate masterplan that shows their true intentions for the totality of the Z15 lands is a serious issue. The drip feed of piecemeal development applications across these lands (which has accelerated since 2015) is in breach of the Z15 requirement for a masterplan. The lack of accurate and true masterplan being available in the public

realm breaches the contract between the citizen and developer as codified by the city development plan. In this regard it is worth again quoting the judgement of Humphreys J. delivered on Friday the 7th day of May, 2021 regarding the overturning of planning permission on the St Pauls Playing Fields (Ref:ABP-305680-19):

84. Without taking from the principles of land law, we are all, at best, leaseholders on Planet Earth. All property must be held with some view to the benefit of society as a whole and of future generations, and is not to be dealt with as one sees fit. Even the most self-made Ayn-Randian entrepreneur draws enormous benefits from her membership of society – whether directly, or through the benefits provided by the State to her workers, contractors, tenants and purchasers, that ultimately facilitate the entrepreneur's economic well-being. What society asks in return is, among other things, that there should be no development other than that which is proper, sustainable and lawful. To argue that society's endeavours to ensure that outcome (through development plans, for example) have to be read narrowly and restrictively, while the individual property owner can take the full advantage of societal provision both direct and indirect, is to entirely distort the social contract. Insofar as law in general and development plans in particular are part of the People's benefit under that contract, they are terms for the welfare of all, not penal clauses to be read *contra proferentem*.

In the absence of a true and accurate masterplan any development of the land is in breach of the Z15 zoning requirements in force at the time and cannot be granted.

6. The Z15 zoning previously applied to the lands (prior to 14/12/2022) was intended to protect the amenity and biodiversity use of St Pauls playing fields, but the strength of the zoning was undermined in an unforeseen way by a case taken by the Sisters of Charity against Dublin City Council [*Christian v. Dublin City Council (No. 1)* [2012] IEHC 163, [2012] 2 I.R. 506.] forcing it to amend the Z15 zoning on religious and institutional lands to allow for "consideration of residential development". Subsequently the Vincentian Order and Marlet Property Group tried to use this unforeseen change to illegitimately alienate the established use of the land -by the community for sports, and by protected species for grazing- in order to make windfall profits. This cannot be permitted.

Judge Humphreys noted the following in his ruling that overturned An Bord Pleanála's previous grant of permission for a similar large residential development on the playing fields at Judicial Review in 2021 (Ref: ABP-305680-19):

2. The issue of zoning of institutional lands in Dublin city has a turbulent history. In 2010, the development plan for 2011 to 2017 was adopted which included a zoning for institutional lands (Z15). Initially residential development was open for consideration on such lands, as the draft plan was proposed by the manager, but the members removed this against official advice. That element of the zoning was quashed in *Christian v. Dublin City Council (No. 1)* [2012] IEHC 163, [2012] 2 I.R. 506. The Z15 zoning was ultimately rephrased in the manager's terms, allowing residential development as open for consideration.

And,

7. These lands were zoned Z15 "to protect and provide for institutional and community use". The zoning map B notes the lands as including a "sports ground". The developer, presumably in the belief that it would improve the prospects for residential development, terminated the use of the five pitches by sports clubs in late 2017 and ceased cutting the grass on the pitches in August 2018.

We have made the point in 3) above, that the Humphreys Judgement re-established and confirmed the protections intended to be conferred on these lands by the original Z15 zoning under the (then) City Development Plan. As such, the loophole the applicant has sought to exploit in the amended Z15 designation has been closed in relation to these lands.

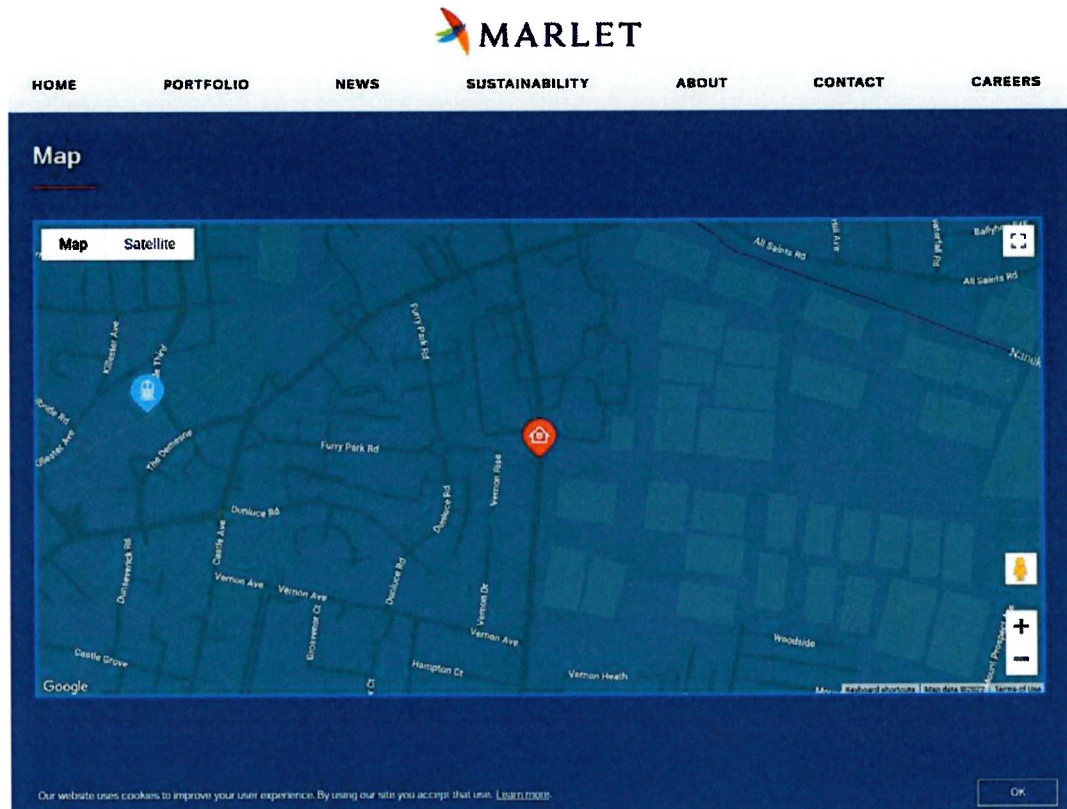
It is also worth pointing out that the elected councillors on Dublin City Council have further remedied this potential weakness in the land's intended protection by zoning them Z9 Amenity/Open Space Lands/Green Network under the current City Development Plan (2022-2028); the land is now zoned Objective Z9 "To preserve, provide and improve recreational amenity, open space and ecosystem services" which fully protects their established amenity use and ecological purpose from the attentions of speculative developers. This preserves the lands as originally intended and as per the contract between the planning authority and the community that forms the basis of land use zoning under all development plans.

7. **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 either the previous Z15 zoning under the 2016-2022 City Development Plan, nor the current Z9 zoning under the 2022-2028 City Development Plan.**

The proposed pitches shown on the application are miniature pitches barely amounting in total to the size of one GAA pitch, in lieu of the original 6 full-size pitches from which sporting use was illegitimately 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.



Aerial view of the original full extent of the established St Paul's playing fields.



Screenshot from the Marlet website of their location map for "Foxlands" still showing the original full extent of the established St Paul's playing fields.



Map on page 22 of "Foxlands Raheny Masterplan Approach for Redevelopment" showing three undersized miniature pitches in lieu of the original six full sized pitches.

8. Despite the recent efforts of the Vincentian Order and Marlet Property Group to alienate the lands, they are an established part of St Anne's Park through public use and as evidenced on maps such as the 1971 Dublin Development Plan, the Dublin Street Atlas and Guide (4th ed) 2003, the OSI Dublin Street Map 2008 and the Dublin Bay Biosphere Map.

The below maps clearly show the St Paul's playing fields under amenity use as part of St Anne's Park with the name of the park written across them:



1971 Dublin Development Plan with St Anne's Park in the bottom left quadrant of the image.



1971 Dublin Development Plan with St Anne's Park in the centre of the image. The ST of ST ANNE'S PARK is written on the St Paul's Playing Fields.



The Dublin Street Atlas and Guide (4th ed) 2003: The ST of ST ANNE'S PARK is written on the St Paul's Playing Fields.



Ordnance
Survey
Ireland

National Mapping Agency
www.osi.ie

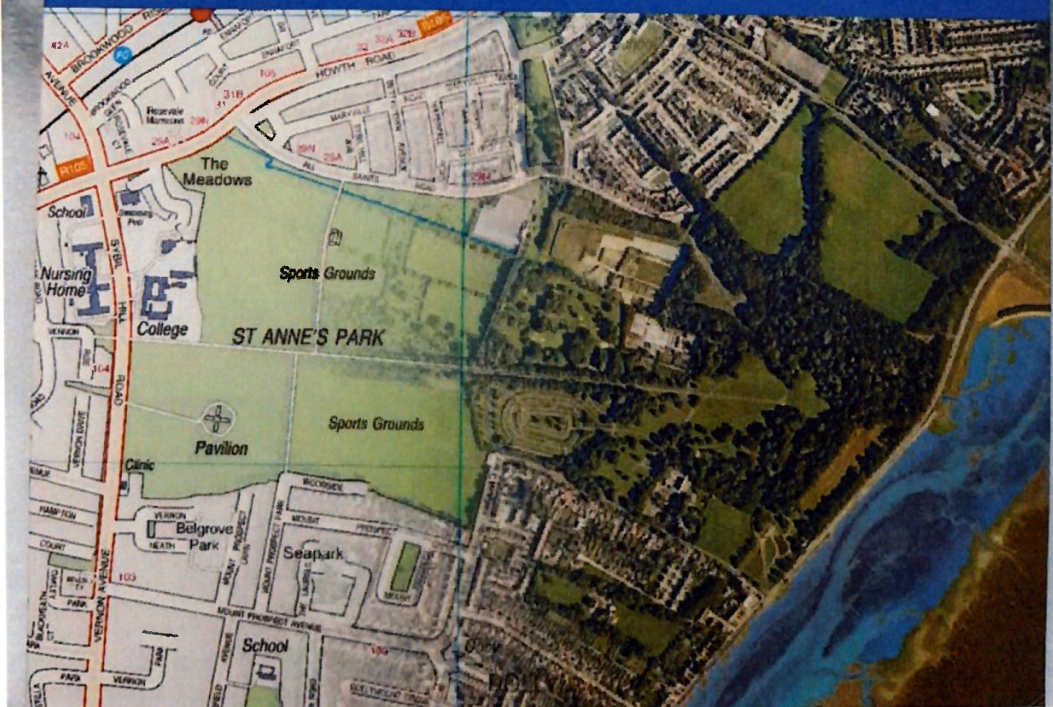
19th Edition

DUBLIN

Street Map

Street Index

1 Grid Square = 1 Kilometre



Cover of OSI Dublin Street Map 2008: The ST ANNE of ST ANNE'S PARK and the "Sports" of "Sports Grounds" are written on the St Paul's Playing Fields.

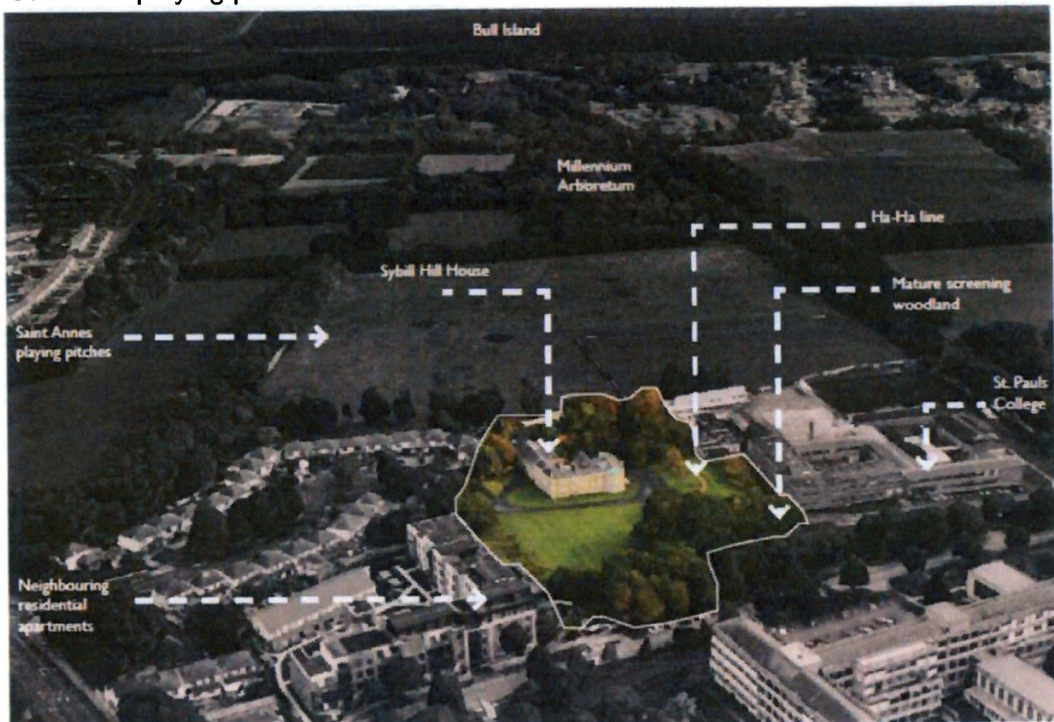


OSI Dublin Street Map 2008: The ST ANNE of ST ANNE'S PARK and the "Sports" of "Sports Grounds" are written on the St Paul's Playing Fields.

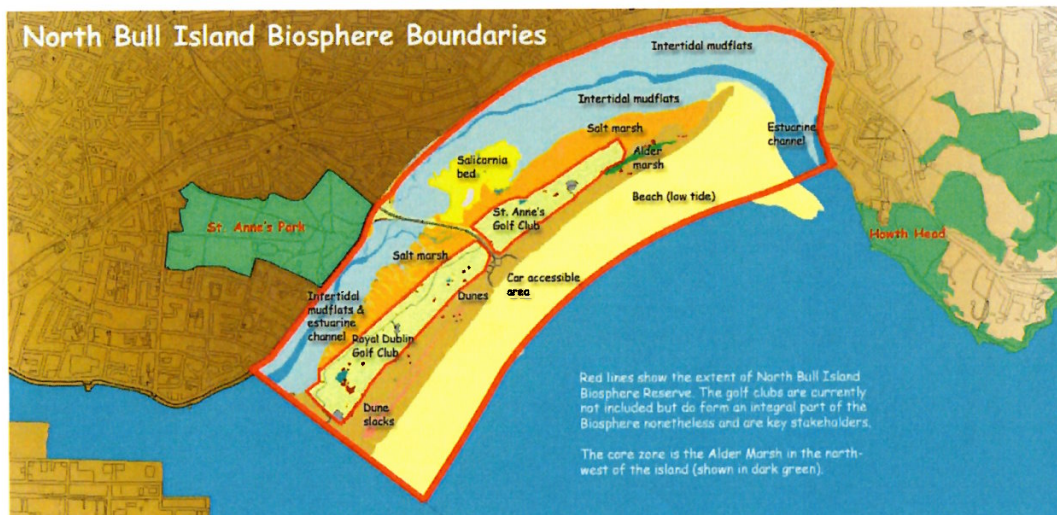
It is also worth highlighting page 2 of the planning report by Tom Philips + Associates, submitted as part of the planning application for Sybil Hill House (Ref 5155-22):



Figure 1 of the planning report shows the lands subject to this appeal tagged as the "St Anne's playing pitches":



Additional to the established public amenity use function of these lands, they also play an identified role supporting the Dublin Bay Biosphere as the main ex-situ site for the Bull Island SPA:



North Bull Island Biosphere Map showing the supporting green area of St Anne's Park, which includes the St Paul's playing fields.

These documents serve to confirm the long-established use of these lands as a public amenity sports ground with a recognised ecological function within St Anne's Park.

In conclusion, we concur with Judge Humphries that there should be no development other than that which is proper, sustainable and lawful, and count on An Bord Pleanála to stay true to its mandate to be impartial and ensure that development respects the principles of sustainable development, including the protection of the environment. We trust that An Bord Pleanála will support the proper planning and development of the area; including the democratic mandate of the city councillors, the integrity of the Dublin City Development Plan, European habitat protections, and the precedent of the Humphries Judgement, and, by doing so, avoid the necessity of a further Judicial Review by refusing the applicant's appeal.

Yours Sincerely

Larry Stanley & Celia Stanley