Our Case Number: ABP-315183-22

Planning Authority Reference Number: LRD6002/22S3

An Bord Pleanála

Eimear Kenny
12 Furry Park Court
Killester
Dublin 5
D05XY47

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	**Tel**	(01) 858 8100
Glao Áitiúil	**LoCall**	1800 275 175
Facs	**Fax**	(01) 872 2684
Láithreán Gréasáin	**Website**	www.pleanala.ie
Ríomhphost	**Email**	bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Lodgement Cover Sheet - LDG-060166-22

315 183 LRD 6002/22S3

An Bord Pleanála

Details

Lodgement Date	21/12/2022
Customer	Eimear Kenny
Lodgement Channel	Web Portal
Lodgement by Agent	No
Agent Name	
Correspondence Primarily Sent to	
Registered Post Reference	

Lodgement ID	LDG-060166-22
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-047047-22
Related Payment Details Record	PD-046937-22

Observation

	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,

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	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

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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.foxlandslrd2022.ie.
Applicant	
Additional Supporting Items	Yes

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AMN 21/12/2022

An Bord Pleanála

Planning Appeal Online Observation

Online Reference
NPA-OBS-001650

Online Observation Details

Contact Name
Eimear Kenny

Lodgement Date
21/12/2022 16:01:23

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

Payment Details

Payment Method	Cardholder Name	Payment Amount
Online Payment	Eimear Kenny	€50.00

Processing Section

S.131 Consideration Required

☐ Yes — P.T.O. ☐ N/A — Invalid

Signed _____ **Date** _____

EO

S.37

File With

SECTION 131 FORM

Appeal No

ABP—

Defer Re O/H ☐

Having considered the contents of the submission dated/received .....

from ..... I recommend that section 131 of the Planning and Development Act, 2000 be/not be invoked at this stage for the following reason(s):

.....

Section 131 not to be invoked at this stage. ☐

Section 131 to be invoked — allow 2/4 weeks for reply. ☐

Signed

EO

Date

Signed

SEO/SAO

Date

M

Please prepare BP ..... — Section 131 notice enclosing a copy of the attached submission.

To

Task No

Allow 2/3/4 weeks

BP

Signed

EO

Date

Signed

AA

Date

12 Furry Park Court

Killester

Dublin 5

D05 XY47

21st December 2022

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,

I am writing in relation to the above planning appeal submitted by 'Raheny 3 Limited Partnership' (AKA Marlet Property Group) 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, I am lodging this observation with the requisite fee of €50.

I consider the following points are grounds to uphold Dublin City Council's decision to refuse planning permission for this scheme.

1. 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.

2. 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.

3. 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".

4. 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.] which forced an amendment to the Z15 zoning on

religious and institutional lands to allow for "consideration of residential development". Subsequently, applications to build on Z15 lands in general and the St. Paul's lands in particular, have sought to utilise this 'open for consideration' clause to achieve Z1 type uses on lands that the City clearly intended to maintain for community and institutional uses. This cannot be permitted to continue.
It is notable that Dublin City Council, under the new City Development Plan, seek to protect both the letter and the spirit of the law in relation to Z15 zoning.

I quote here from the CE's report no. 261/2-22 dated 21/0/2022, page 117

"the Council have sought to strengthen the recognition and role of the city's Z15 land-bank under the Draft Plan by protecting, improving and encouraging the ongoing use and development of lands zoned Z15 in the Draft Plan for community and social infrastructure. The Council specifically recognises that institutional lands are an important community resource and should be preserved and protected as a strategic asset for the city."

5. Despite the recent efforts of the landowners 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.

6. 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. I vehemently objected to the original proposal on these grounds and have set out the reasons for this which were included in my original submission below.

Reasons why I believe this development does not meet Z15 zoning objectives:
Under the Development Plan, residential is listed as an 'open for consideration use' for land that is zoned as Z15. The Development Plan sets out that *'Where there is an existing institutional and/or community use, any proposed development for 'open for consideration' uses on part of the landholding, shall be required to demonstrate to the planning authority (i) how the proposal is in accordance with and assists in securing the aims of the zoning objective; (ii) how it secures the retention of the main institutional and community uses on the lands, including space for any necessary expansion of such uses; (iii) how it secures the retention of existing functional open space e.g. school playing fields; and (iv) the manner in which the nature and scale of the proposal integrates with the surrounding lands.'*

This proposal does not meet these requirements for the following reasons:

(i) Is the proposal in accordance with and does it assist in securing the aims of the zoning objective?

The aim of Z15 land is **'to protect and provide for institutional and community uses'.**

This proposal is a large-scale residential development. The nursing home element of the development is minimal. Assuming, conservatively, that the 1-bedroom apartments will accommodate 1 person each, and that the 3-bedroom apartments will accommodate 4 people each, 6.5% of the total accommodation will be for nursing home residents which likely does meet the permissible use of 'residential institution' (see calculations in Appendix 1). This means that a massive 93.5% of the total accommodation that would be built under this proposal does not 'protect and provide for institutional and community uses'. Looking at the history of the planning applications on this piece of land, it is clear that the proposal to include 100 nursing home beds is a token gesture made by the developer in order to gain planning permission with a minimal commitment to protecting and providing for institutional and community uses. It is not possible, in my opinion, to reasonably conclude that a development where only 6.3% of the accommodation is made available for institutional and community use can be viewed to meet the zoning objective of Z15. The application refers to a 'large-scale residential development' and that is exactly what this is. It is a large-scale residential development which would be suitable for land that is zoned Z1. It does not protect and provide for institutional and community uses in the way in which land that is zoned Z15 should be used.

(ii) **Does the proposal secure the retention of the main institutional and community uses on the lands, including space for any necessary expansion of such uses?**

Up until the sale of the land to the developer in 2015, this land was used as playing pitches by St. Paul's College and by the local community. The lands have since been fenced off and licenses to use them by sports groups were not renewed. This proposal does not secure the retention of the lands as playing fields for the community which was the main use prior to the sale of the land to the developer. Furthermore, as detailed above, the proposal is predominantly a large-scale residential development with only a minimal proportion of the development providing an institutional and community use that is permissible under Z15 in the form of 100 nursing home beds and a creche.

The proposal also does not include space for the necessary expansion of institutional and community uses. Once the proposed development would be built, there would be no opportunity for a larger proportion of the land to be used for institutional and community uses.

(iii) Does the proposal secure the retention of existing functional open space e.g. school playing fields?

The proposal absolutely does not meet this requirement. Up until it was sold to the developer, this land was used as school playing fields and the playing fields were also used by broader community groups. There is no evidence to suggest that the demand for this land to be used in this manner has abated in the time since the land

was sold. It just has not been possible to use it for this purpose since the sale of the land to the developer, as the developer has not allowed or facilitated it.

As outlined in his judgement issued on 7th May 2021, Judge Humphreys clearly addressed the issue of land ownership and the fact that *'a change in ownership does not in itself alter the interest to be protected by the zoning'*. Judge Humphreys noted that *'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.'*

While they have not been used as playing fields or sports grounds since the sale of the land to the developer, this land is still an existing functional open space. The change in ownership does not alter that. The proposal absolutely does not secure the retention of this land as an existing functional open space.

(iv) **Does the nature and scale of the proposal integrate with the surrounding lands?**

This site is directly adjacent to St. Anne's Park, the largest park on the northside of Dublin and often referred to as the 'green lung of the northside'. It is an absolutely fabulous park and a fantastic amenity to the people in the locality and further afield. It was even voted as one of the top 5 parks in the world in 2019 by the Green Flag awards. At a time when green spaces are increasingly under threat, it is absolutely vital to protect those amenities that we have available to us and that will be available to future generations.

The proposed development would border the main avenue of St. Anne's and take significantly from the views along the avenue and in the broader park. Dating back to 2001, there was concern about the visible impact of the perimeter fence that was put up around the site. Per Dublin City Council's Planning Department at the time, *'serious concern is expressed about the visual impact of the proposed 2.4m high palisade boundary fencing on existing hedgerow, trees and brick walls around the perimeter of the site and the visual impact of the proposed development on the character of St. Anne's Park which is a designated Conservation Area within the Dublin City Development Plan 1999. The applicant is requested to submit amended plans and proposals for boundary treatment which will not detract from the visual amenity of the Park and which incorporates all existing, trees and walking with a commitment that these are to be retained'*.

Over the 21 years that have passed since that time, it has become even more important to protect the character and ambience of St. Anne's Park. Green spaces are disappearing and are being eroded bit by bit. Given the concern expressed back

in 2001 about the impact that a 2.4m fence would have, it cannot reasonably be concluded that a development including apartment blocks between 4 and 7 stories could now be considered to integrate sufficiently with the surrounding lands. Not only would the proposal not integrate with the lands, it would be detrimental to all those who come to St. Anne's Park on a daily basis to take a stroll, enjoy some fresh air and take a much-needed break in nature from the business of city life.

Part (ii) Rationale for why this proposal does not meet the 'spirit' of Z15

I work in the financial services industry; an industry which has had to, and is still having to, work to re-gain the trust of consumers following the global financial crisis and numerous failures by institutions which have negatively impacted customers.

Since the global financial crisis, regulators have recognised that rules alone will not guarantee the right outcomes for customers. Behaviours are extremely important and those in roles of responsibility must be held to account for their decision-making. Regulators, including the Central Bank of Ireland, have placed a huge focus on culture, conduct and individual accountability and have increased the requirements and their scrutiny in these areas. The driver behind this focus is that rules require interpretation and that while a decision can be made that might technically comply with a rule, the decision may not have the outcome that the rule was meant to achieve. The additional requirements placed on firms are designed to help ensure that customer outcomes are considered in every decision that is made and that firms should not seek to only comply technically with the rules and regulations but should also meet the principle and 'spirit' of the rules and regulations.

A similar principle applies here. The Dublin City Development plan is adopted by the Dublin City Council. A huge amount of work goes into deciding how each piece of land should be zoned. However, the zoning objectives are, in effect, principles. They need to be interpreted and judgement is required in assessing whether a proposal meets the zoning objective or not. It is not possible to write a plan that would cover every conceivable scenario that could arise with regard to proposed land usage and therefore it is vitally important to consider the spirit of the Development plan and what the zoning objective is meant to achieve.

There is a big difference between a proposal technically meeting the zoning objective and meeting the 'spirit' of the zoning object. I passionately believe that any proposals that are approved should meet the zoning objective for the land in question, both technically and 'in spirit'. Every decision made with regard to a planning application is changing the make-up and environment of the city in which we live. Every decision is of significant importance; in some cases a decision is

making a big difference to the lives of a small number of people and in some cases, such as this, to the lives of a whole community.

I have outlined in Part 1 of my observation why the proposal does not technically meet the zoning objective of Z15. However, it is also my very strong belief that this proposal does not meet the zoning objective of Z15 'in spirit' either. This proposal is a large-scale residential development. The objective of the proposal is certainly not to protect and provide for institutional and community uses. The objective of the proposal is to build a large-scale residential development for profit in a much sought-after location.

The fact that all local Dublin City Councillors oppose this development proves that this proposal is not in line with the principles of Z15; it is absolutely not what was intended when this land was zoned. It is extremely worrying and infuriating that we are in a situation where, over several years, our local Councillors have had to fight so hard to ensure that this land is only used for the purposes for which it was zoned. I do not think it is an understatement to say that granting this application would undermine the democratic process that exists to manage the zoning within Dublin City i.e. the election of Dublin City Councillors who are responsible for adopting the Dublin City Development plan.

I started this section by outlining how the Global Financial Crisis had impacted the confidence that customers have in financial institutions. The confidence that the people of Ireland can have in the planning process has already been shaken by the recent allegations of conflicts of interest at An Bord Pleanala. It is my believe that granting permission for this proposal, in a case where all of the local Councillors oppose it, where they have recently voted to re-zone the land as Z9 in the next Development plan in order to protect it, when it is clear that the objective of the proposal is not to protect and provide for institutional and community uses but rather to build a for-profit housing development would result in a further loss of confidence. It would also set a dangerous precedent for other lands across the city that are zoned as Z15 and which may be bought up by developers looking to build large-scale residential developments on land that is not zoned for that purposed.

We need to be able to trust that the decisions that are made meet the requirements of the zoning objectives and also consider the 'spirit' of the Dublin City Development plan and it is quite clear that in this case, the proposed development does not do either.

Kind regards,

Eimear Kenny

Appendix 1: Proportion of proposed development dedicated to nursing home beds

Type of accommodation	No. of units	No. of people per unit	Total	
1 bed units	272	1	272	
2 bed units (3-person)	15	3	45	
2 bed units (4-person)	233	4	932	
3 bed units	60	4	240	
Nursing home beds	100	1	100	A
Total			**1589**	B

% of nursing home beds **6.29%** (A/B)*100