

Material Contravention Statement

Proposed SHD

**Lands at St. Teresa's,
Temple Hill, Monkstown,
Blackrock, Co. Dublin**

**On behalf of
Oval Target Limited**

December 2021



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1 INTRODUCTION

Brock McClure Planning & Development Consultants have prepared this Material Contravention Statement on behalf of **Oval Target Limited, in respect of an application for permission submitted directly to An Bord Pleanála** for a proposed Strategic Housing Development [SHD] on lands at 'St. Teresa's', Temple Hill, Monkstown, Blackrock, County Dublin.

The proposed SHD will provide for 493 residential units, associated residential amenity facilities and a café. A full description of the development is set out in the documentation submitted with the application for permission.

This statement details the basis for consideration by An Bord Pleanála of a grant of permission in material contravention of certain non-land use policies and objectives of both the Dun Laoghaire Rathdown County Council Development Plan 2016-2022 and the Blackrock Local Area Plan 2015 in relation to:

1. **Building Height**
2. **Residential Mix**
3. **Residential Density**
4. **Trees**
5. **Transition Policy**
6. **Protected Structure and St. Teresa's Lodge**
7. **Institutional Designation and Open Space**

Table 1 - Potential for Material Contravention

For the purpose of this statement, the proposed development comprises the following principal elements:

1. **Building Heights of 1 to 10 storeys**
2. **Residential Unit Mix of 18 no. studio units (4%); 220 no. 1 bed units (45%); 208 no. 2. bed units (42%); and 47 no. 3 bed units (9%)**
3. **Residential Density of 123 units per ha (gross) and 165 units per ha (net)**
4. **A total of 78 trees are proposed for removal on this site.**
5. **The site is located in a Transitional Zone - The site is zoned 'Objective A' and located adjacent to a large area of lands zoned 'Objective F'.**
6. **The proposal provides for the 'Dismantling' and 'Relocation' of a Protected Structure.**
7. **The proposal is located on a site to which the Institutional designation applies. Open Space provision is subject to the population equivalent standards of the Development Plan as the higher standards.**

Table 2 - The Proposal in Summary

1.1 Legislative Context

The Planning and Development (Housing) and Residential Tenancies Act, 2016 ("the 2016 Act"), empowers An Bord Pleanála to grant permission for a strategic housing development which materially contravenes policies and objectives of a Development Plan or Local Area Plan, other than in relation to the zoning of land. In these circumstances, the provisions of subsection 9(6) of the 2016 Act are relevant:

(6) (a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under Section 4 even where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned.

(b) The Board shall not grant permission under paragraph (a) where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of land.

(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if Section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.

In circumstances where: (i) the Board has the power to decide to grant permission for a proposed SHD where the proposed development contravenes the development plan or local area plan; (ii) the proposed St. Teresa's SHD does not contravene the development plan or local area plan in relation to the zoning of land; then (iii) the provisions of section 37(2)(b) of the Planning and Development Act 2000 ("the 2000 Act") are relevant to the Board's consideration of this planning application.

Section 8(1)(iv)(II) of the 2016 Act specifies that, where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the SHD application must include a statement indicating why permission should, nonetheless, be granted, having regard to a consideration (or considerations) specified in section 37(2)(b) of the Act of 2000.

A response to the relevant criteria above is provided in Section 3 of this report and demonstrates that a number of the criteria in section 37(2)(b) are satisfied in respect of the proposed St. Teresa's SHD, thereby enabling the Board to decide to grant permission, notwithstanding the material contravention of certain non-land use policies and objectives of both the Dun Laoghaire Rathdown County Council Development Plan 2016-2022 and the Blackrock Local Area Plan 2015. Thereafter, the statement sets out the reasons why the Board should nonetheless grant permission, having regard to the provisions of section 37(2)(b) of 2000 Act.

In considering whether to grant permission notwithstanding the material contravention of both the CDP and LAP, it is also necessary for the Board to carefully to consider the requirements of Specific Planning Policy Requirements (SPPRs) under relevant ministerial guidelines issued pursuant to section 28 of the Act of 2000. Such guidelines include:

- The 'Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)'
- The 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020)'

In this context, subsection 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 refers to SPPRs and provides:

(3) (a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.

(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.

(c) In this subsection "specific planning policy requirements" means such policy requirements identified in guidelines issued by the Minister to support the consistent

application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.

This material contravention statement is submitted on the basis that:

- i. The proposed SHD is of strategic importance;
- ii. There are conflicting objectives in the Development Plan and Blackrock Local Area Plan 2015 (as extended to 2025);
- iii. The proposal can be positively considered having regard to Section 28 Ministerial Guidelines published post the adoption of the relevant Development Plan for the area, namely, the Dún Laoghaire Rathdown County Development Plan 2016-2022; and
- iv. There is a permission in place for this site (ABP-303804-19), which has established a number of principles for development, since the making of the Dun Laoghaire Rathdown County Development Plan in 2016-2022 and Blackrock LAP 2015.

The majority of the subject site is zoned 'A' - "To Protect and/or improve residential amenity". Uses permitted in principle under this zoning include 'Residential' and 'Childcare Facility'. Accordingly, the proposed residential uses, crèche facility and gym element of the residential clubhouse are permitted in principle. In addition, a portion of the site is zoned 'F' - "To preserve and provide for open space within ancillary recreational amenities". The only use proposed for this portion of the site is Open Space', which is a permitted use under the zoning objective.

In these circumstances, the proposed development complies with the land use zoning objectives and there is no question of a contravention, still less a material contravention, of the land use zoning objectives which would otherwise preclude the Board from granting permission.

2 ELEMENTS OF MATERIAL CONTRAVENTION

The provisions of the Blackrock LAP 2015 and the Dún Laoghaire Rathdown County Development Plan 2016-2022 as they relate to the matters subject of this material contravention statement are outlined below. The position of the applicant with regard to these provisions is also identified.

2.1 Building Height

1. Blackrock Local Area Plan 2015 - (Extended to 2025)

Within the Blackrock Local Area Plan 2015 there are a number of key objectives which restrict building height potential on the site of the proposed development. The provisions of the LAP as it relates to height contradicts the provisions of the subsequently adopted Dún Laoghaire Rathdown Development Plan 2016-2022 (and specifically Appendix 9 - Building Height Strategy) and subsequently made Ministerial guidelines, namely, the 'Urban Development and Building Height - Guidelines for Planning Authorities (2018)' and 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)'.

The policies in the LAP which frame the local context for height are identified as follows:

Policy BK05

"It is Council Policy to ensure that Building Height within future developments in Blackrock makes a positive contribution to the built form of the area and do not adversely impact on local amenity."

Policy SH1

"It is an objective of the Council to ensure that building height in Blackrock is in accordance with the building height limits set out on Map 12, The Height Sensitive Areas (as identified on Map 12) and Objectives DS1 & DS2 and CS1 and CS2 (St Teresa's, Dunardagh and Cluain Mhuire Site Framework Strategies), Objective ES1 (Section 3.5.3 'Former Europa Garage Framework Strategy') and Objective FR7 (Section 7.7.1 'Redevelopment of Blackrock and Frascati Shopping Centres') and shall have regard to Development Guidance set out in Section 7.7.2."

Objective SH2

"It is an objective of the Council to require all development proposals, including infill development, include an analysis of the impact of building height and positioning of buildings on:

- *The immediate & surrounding environment - streetscape, historic*
- *Character*
- *Adjoining structures*
- *Open spaces and public realm*
- *Views and Vistas"*

Design Objective DS1

"It is an objective of the Council that any redevelopment of the St. Teresa's and Dunardagh lands shall incorporate a range of building heights in accordance with the limits set out on Map 12.

Notwithstanding the maximum height limits identified, the Planning Authority would have to be satisfied that the proposed development for the entire site provides for a range of building height that is respectful of the site's topography, natural and built heritage and that would enhance the overall visual character of the area and would afford adequate protection of the residential amenity of existing adjoining properties, in particular those which are in either close proximity to or about the site boundary such as Barclay Court and St Vincent's Park."

Design Objective DS2

“It is an objective of the Council that building heights within those areas identified on Map 12 as ‘Height Sensitive Areas’ shall take particular cognisance of the setting of the Protected Structures and shall not have an adverse effect in terms of scale, height and massing.”

A number of the above objectives and policies reference Map 12 of the LAP document, which is set out below, for ease of reference:



Proposed Building Height Limit



Figure 1 – Heights Envisioned by the Blackrock LAP

Evidently, 2 and 5 storey development is identified in the LAP for the northwest of the site along Temple Hill and Barclay Court. Moreover, 3 storey development is identified along the avenue and adjacent to St. Vincent's Park. The remainder of the site is earmarked for 4 - storey development with the exception of a Height Sensitive Area around the Protected Structure.

For the purpose of this report, the LAP requirements for height are set out and compared below with the heights proposed within the St. Teresa's SHD.

| Block | LAP Limit | Proposed Heights | Deviation |
|------------------------|-----------------------|------------------|---|
| Block A1 | 3 and 5 storeys | 5 storeys | 1 to 2 storeys |
| Block B1 | 5 storeys | 10 storeys | 5 storeys |
| Block B2 | 4 storeys | 8 storeys | 4 storeys |
| Block B3 | 4 storeys | 8 storeys | 4 storeys |
| Block B4 | 3 and 4 storeys | 5 storeys | 1 to 2 storeys |
| Block C1 | Height Sensitive Area | 3 storeys | None (Existing 3 storeys maintained in C1 and C2. C3 is a 1 storey building) |
| Block C2 | Height Sensitive Area | 3 storeys | |
| Block C3 | Height Sensitive Area | 1 storey | |
| Block D1 | 4 storeys | 6 storeys | 2 storeys |
| Block E1 | 4 storeys | 6 storeys | 2 storeys |
| Block E2 | 4 storeys | 6 storeys | 2 storeys |
| Block G (Gate Lodge) | 1 storey | 1 storey | None |
| Block H (St. Teresa's) | 3 storeys | 3 storeys | None |

Table 1 - Proposed Building Heights/Deviations from the LAP

Undoubtedly, the objectives contained within the Blackrock Local Area Plan 2015 pre-date the adoption of the Building Height Strategy in the County Development Plan and also the *Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)*.

In summary, the objectives currently contained within the Blackrock LAP 2015 contradict the provisions of the Building Height Strategy set subsequently in the Dun Laoghaire Rathdown CDP, in that they are restrictive and set numerical limits by way of site-specific strategies.

2. Dun Laoghaire Rathdown County Development Plan 2016-2022

For the purpose of this material contravention statement, the following sections set out the key policy and provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022 as they relate to height and the subject site.

Policy UD6

Policy UD6 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 states that **“it is the Council's objective to adhere to the recommendations and guidance set out within the Building Height Strategy for the County”**.

Building Height Strategy

Appendix 9 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 comprises the 'Building Height Strategy' referenced in Policy UD6. It should be noted that the Ministerial guidance for height has significantly changed since the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022 (which includes the 'Building Height Strategy') with the publication of the 'Urban Development and Building Height - Guidelines for Planning Authorities (December 2018)'.

With regard to infill sites, it is stated in the DLRCC Building Height Strategy that the general approach in terms of building heights in these sites has been to taper height from a high point in the centre of the site down to the site boundaries where the height of adjacent buildings can often be lower.

This general approach has been complied with in the design of the proposed SHD, with particular care taken for existing levels of residential amenities at adjoining residential developments at St. Vincent's Park, St. Louise's Park and Barclay Court.

The DLRCC Building Height Strategy goes on to state that *"this maximum height (3-4 storeys) for certain developments clearly cannot apply in every circumstance. There will be situations where a minor modification up or down in height could be considered. The factors that may allow for this are known as 'Upward or Downward Modifiers' "*.

The Strategy refers to certain exceptional circumstances where a case may be made for additional height in certain locations. A proposal must meet more than 1 Upward Modifier in order to qualify as a suitable location for additional building height (that being 1 or 2 storeys of additional height). The proposed development meets the criteria of the following Upward Modifiers:

b. The development would provide major planning gain, such as:

- ***Significant improvements to the public realm,***
- ***The provision or significant enhancement of a public transport interchange,***
- ***The provision of new or improved transport infrastructure.***

The proposal provides for a key connection to the adjoining Rockfield Park with significant improvements to permeability from Temple Hill to this large parkland. The delivery of a new proposal for a café adjacent to Rockfield Park is also considered a significant planning gain. The proposal also delivers a new public urban realm along Temple Hill with the opening of the site to provide a new interface with Temple Hill. The scheme delivers on new views and vistas to and from St. Teresa's, which is considered a significant enhancement of the public realm.

d. The built environment or topography would permit higher development without damaging the appearance or character of the area, for example:

- ***In an area where the location or scale of existing buildings would allow the recommended height to be exceeded with little or no demonstrable impact on its surroundings,***
- ***In a dip or hollow, behind a rise, or near a large tree screen, where the impact of a higher building would have little or no additional impact on its surroundings.***

This site has the capacity to absorb additional height at appropriate locations and specifically along the dual carriageway at Temple Hill and along the southern boundary of the site overlooking Rockfield Park as noted, for example, in the planning assessment of the Board's Inspector in the context of the 2019 application for permission (page 33 ABP Inspectors Report ABP-303804-19).

e. A development would contribute to the promotion of higher densities in areas with exceptional public transport accessibility, whilst retaining and enhancing high quality residential environments.

The proposal is located adjacent to a proposed Bus Priority Route at Temple Hill (N31) and is proximate to DART stations at Seapoint (6m walk) and Blackrock (11 min walk) and is, therefore, located in an area of excellent public transport accessibility. The current density proposal of

approx. 123 units per ha gross figure and 165 units per ha net figure (based on 493 unit on a site of 3.9ha) is considered an appropriate residential density for a site proximate to public transport infrastructure.

f. The size of a site, e.g., 0.5ha or more, could set its own context for development and may have potential for greater building height away from boundaries with existing residential development.

The site is over 0.5 ha in size (approx. 3.9ha in total) and therefore would be in a position to justify an increase in height at this location, once it is appropriately set back from boundaries with existing residential development.

The above considered, it is clear that upward modifiers b, d, e and f apply to the site and, as such, additional heights of 1 and 2 floors above the 3-4 storey maximum can be considered for this site. In addition, as set out above, the proposed development comprises buildings with heights of up to 10 storeys, which is an increase above that envisioned by the 'Building Height Strategy' contained in the CDP.

However, notwithstanding the fact that the proposed height materially contravenes the provisions of the LAP and, in certain respects, the CDP as they relate to height, for the reasons set out in this report, there is adequate support at national policy level (and, in particular, by way of Ministerial guidelines) to justify a grant of permission for the proposed SHD with the building heights as proposed in this application.

In particular, reference is made to section 9(3)(b) of the 2016 Act, which provides that specific planning policy requirements (SPPRs) take precedence over any conflicting provisions of a Development Plan.

In particular, a grant of permission for increased building height is justified by reference to SPPR 3A of the 'Urban Development and Building Heights, Guidelines for Planning Authorities (2018)', as detailed in Section 3 of this report.

2.2 Residential Mix

1. Blackrock Local Area Plan 2015 - (Extended to 2025)

Within the Blackrock LAP there are a number of policies and objectives that relate to residential mix, as follows:

Design Objective DS4

"It is an objective of the Council that any proposals for new residential development on the St. Teresa's and Dunardagh lands shall incorporate a residential mix which both complements and enhances the existing residential mix within the wider Plan area and supports a variety of households in accordance with Section 5.2 of the Local Area Plan and Section 16.3 of the current County Development Plan. Any redevelopment of the site should incorporate a considered mix of houses and apartments. Consideration should be given to the provision of housing for the elderly in accordance with Policy RES9: 'Housing for the Elderly' (Section 5.4.3) of the County Development Plan 2010-2016".

Policy BK14

"It is Council policy that all new residential development within the Plan area shall provide for a sustainable mix of house types, sizes and tenures that meet the needs of a range of households and that both complement and enhance the existing residential mix."

Objective H2

"It is an objective of the Council that all new residential development within the Plan area shall be designed having regard to the minimum quantitative and qualitative standards as set out in Section 16.3 of the County Development Plan 2010-2016."

2. Dun Laoghaire Rathdown County Development Plan 2016-2022

Section 8.2.3.3 (iii) of the County Development Plan sets out the requirements in relation to the mix of units provided as part of new apartment development as follows:

"Apartment developments should provide a mix of units to cater for different size households, such that larger schemes over 30 units should generally comprise of no more than 20% 1-bed units and a minimum of 20% of units over 80 sq.m...."

The following statement contained on the cover page of Chapter 8 of the Development Plan appears to exclude **Section 8.2.3.3.(iii)** as referred to above.

*"ADVISORY NOTE - Sustainable Urban Housing – Design Standards for New Apartments' DoECLG(2015) - Users of this Dún Laoghaire-Rathdown County Development Plan 2016-2022 are advised that the standards and specifications in respect of Apartment Development- as set out in **Section 8.2.3.3. (i), (ii), (v), (vii) and (viii)** of the Development Plan Written Statement –have been superseded by Ministerial Guidelines 'Sustainable Urban Housing – Design Standards for New Apartments' published by the Department of Environment, Community and Local Government (DoECLG) on 21st December 2015."*

In consideration of this matter, we note that the proposed development provides for the following mix of units:

- 18 no. studio units (4%)
- 220 no. 1 bed units (44%)
- 208 no. 2. bed units (42%)
- 47 no. 3 bed units (10%)

In addition, the percentage of units with a floor area over 80 sq m is 29.6 % or 146 of 493 units proposed.

Notwithstanding the fact that the proposed residential mix materially contravenes the provisions of the Local Area Plan, there is adequate support at national policy level (by way of Ministerial

guidelines) to justify a grant of permission for the proposed SHD with the building heights as proposed in this application.

A grant of permission is appropriate in circumstances where, as stated above, section 9(3)(b) of the 2016 Act provides that *specific planning policy requirements* (SPPRs) take precedence over any conflicting provisions of a Development Plan.

Specifically, it is our opinion that a grant of permission for increased residential mix is justified by reference to SPPR 1 of *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'2020'*, as detailed in Section 3 of this report.

2.3 Residential Density

1. Blackrock Local Area Plan 2015 - (Extended to 2025)

There are a number of policies and objectives in the Blackrock LAP relating to residential density, as follows:

Policy BK04:

"It is council Policy to ensure that future residential development within Blackrock is at a scale and density appropriate to its location whilst providing for the sustainable growth of the area".

Objective DN1

"It is an objective of the Council to promote an efficient use of land that strengthens the existing urban structure of Blackrock and complements the character of the area."

Objective DN2

"It is an objective of the Council to achieve minimum densities within the Blackrock Local Area Plan boundary in accordance with the County Development Plan standards in order to generate a critical mass of population to support and sustain urban services including public transport."

Objective DN3

"It is an objective of the Council to ensure that residential densities for specific future developments in Blackrock are in accordance with Section 3.5 Site Framework Strategies, Objectives DS3, CS3 and ES2."

Objective DN4

"It is an objective of the Council to ensure that higher density development in Blackrock is of a high-quality design and incorporates high levels of amenity."

Objective DS3

Objective DS3 - It is an objective of the Council that any redevelopment of the St. Teresa's and Dunardagh landholding shall incorporate a high quality residential development with a minimum density range of 45 - 55 units per hectare.

In calculating density, Formal Gardens (Character Area 1) identified on Map 6 and in Chapter 2, Section 2.1.3 and illustrated on Drawing 2 and the various tree belts on the site (as illustrated on Drawing 2) shall be excluded from the total site area."

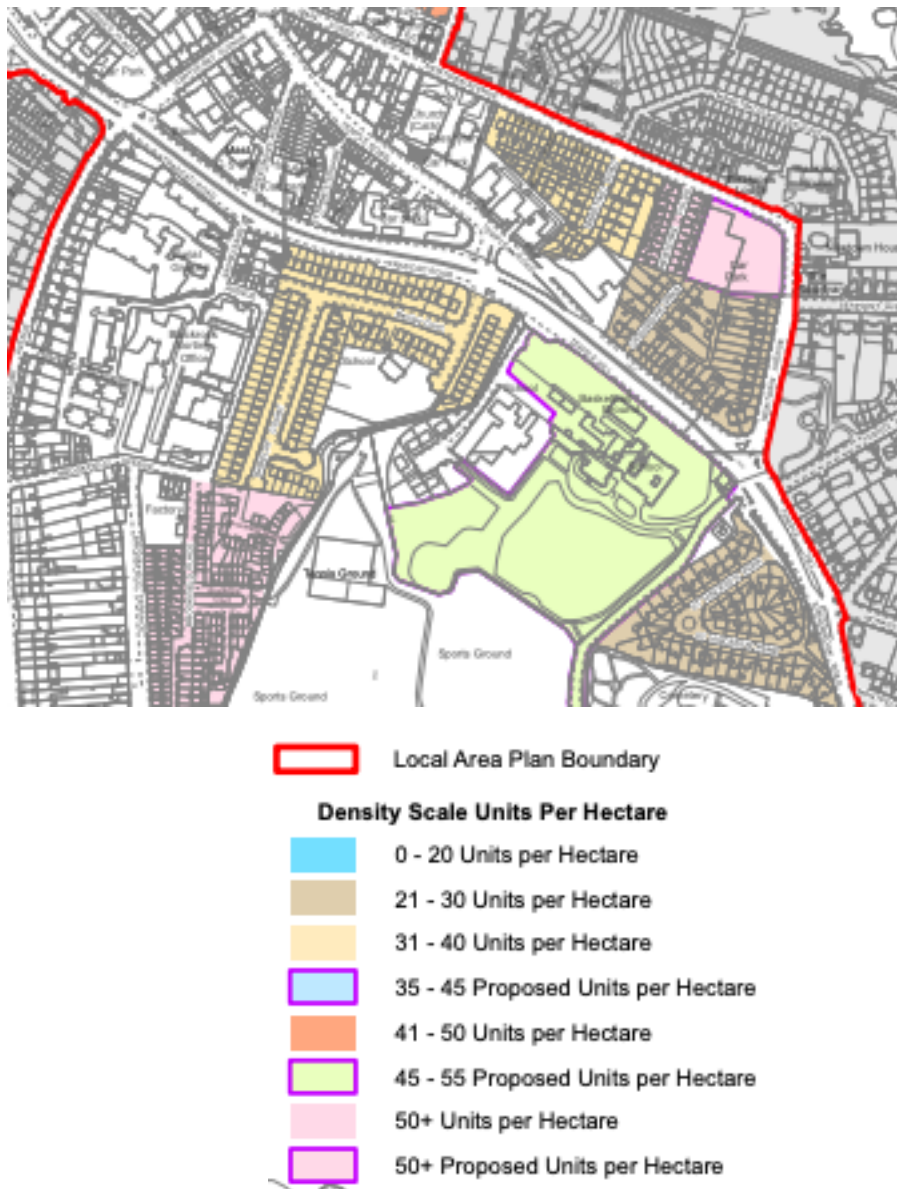


Figure 2 - Residential Densities Envisioned for the Site

It is clear that the above policies and objectives of the Blackrock Local Area Plan envisage densities in the region of 45-55 units per ha for this site.

Given the requirements of Objective DS3 specifically, we note that a net residential density of 165 units per ha are proposed (493 units, based on a site area of 2.9823 ha).

The residential density is calculated as follows:

- Site area = 39917.1 m²
- Residential Density (site area) = $493/39917.1 = 123$ units / HA
- Residential density (site area – Tree belt 1 and Tree belt Avenue and Tree belt St Teresa's & gatelodge) = $493 / 29823.1 = 165$ units / Ha



Figure 3: Site Map of Tree Belts for calculation of Residential Density

2. Dun Laoghaire Rathdown County Development Plan 2016-2022

Policy RES3:

“It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009).
- ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009).
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007).
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).
- ‘National Climate Change Adaptation Framework - Building Resilience to Climate Change’ (DoECLG, 2013).

This policy goes on to state the following:

"Where a site is located within circa 1 kilometre pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and/or 500 metres of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged."

Section 8.2.3.2 of the Development Plan states:

"In general, the number of dwellings to be provided on a site should be determined with reference to the Government Guidelines document: 'Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities' (2009). As a general principle, and on the grounds of sustainability, the objective is to optimise the density of development in response to type of site, location and accessibility to public transport. However, the overriding concern should be the quality of the proposed residential environment to be created and higher densities will only be acceptable if the criteria which contribute to this environment are satisfied. Higher residential density will not be appropriate in every circumstance and qualitative built form can sometimes be a more important determinant. Higher densities should have regard to surrounding dwellings and should be achieved tandem with the protection of the amenity of the future residents of the proposed development (Refer also to Policy RES3 in Section 2.1.3.3)."

It is clear that Policy RES3 provides that for this particular development site, densities should be in the region of 35-50 units per ha and that higher densities will be allowed where it is demonstrated that the site is located within certain distances of various public transport nodes. This conflicts with the provision of the Blackrock LAP 2015, as set out above.

Given the requirements of Objective DS3 (from the Blackrock LAP) specifically, we note that a net residential density of 165 units per ha is proposed.

This is considered appropriate and achievable at this location given the quality of the scheme proposed; the location of the site adjacent to a proposed bus priority route at Temple Hill; and the proximity of the site to both Seapoint (550m) and Blackrock (700m) DART Stations.

Indeed, the St. Teresa's SHD site is very well placed to take advantage of non-car modes of travel to support the increased scale of development, and the protection of existing levels of residential amenity for the sites surroundings. The open character and residential amenity of the site is retained through a high quality, open landscape design that reflects the existing character.

In circumstances such as this, where the proposed development gives rise to a material contravention of the Development Plan in respect of residential density, the Board is nonetheless enabled to grant permission in circumstances where the proposal is of strategic importance and the density of the proposed SHD is fundamentally supported by the National Planning Framework, specifically National Policy Objective 35. We therefore set out a full justification of this matter in Section 3 of this report.

2.4 Trees

1. Blackrock LAP 2015 - (Extended to 2025)

Within the Blackrock LAP there are a number of objectives relating to trees as follows:

Design Principle 4:

"Existing Tree Belt to be protected and retained including the Folly. Perimeter of the park to be extended to include tree belts."

Objective DS6:

"It is an objective of the Council that any redevelopment of the Dunardagh lands shall provide for the retention of the tree belts including the folly at St. Teresa's identified on Drawing 2, adjacent to the boundary with Rockfield Park. The boundaries of the tree belts in question are shown as indicative and shall be defined in agreement with the Planning Authority. The existing boundary wall shall be removed to facilitate the integration of the tree belts into Rockfield Park. An appropriate low boundary treatment shall be erected between the tree

belts and any proposed residential development within the St Teresa's and Dunardagh landholding."

Objective DS12:

"It is an objective of the Council to protect and preserve mature trees / tree groupings / hedgerows that add to the character of the sylvan settling of St. Teresa's and Dunardagh landholding. Any redevelopment proposals shall be required to incorporate, as far as is practicable, the amenities afforded by existing trees and hedgerows. Arboricultural assessments carried out by an independent, qualified arboricultural consultant shall be submitted as part of any planning applications for the redevelopment of the lands in accordance with Section 16.7.4 of the County Development Plan 2010-2016."

The site framework strategy for St. Teresa's, has identified existing trees to be retained with the mark of a tree symbol.



Figure 3 - Tree to be Retained

2. Dun Laoghaire Rathdown County Development Plan 2016-2022

Under the Development Plan, there is also an objective on the site ***"To protect and preserve Trees and Woodlands"***. The level of protection is as denoted by the tree symbols on the map below:



Figure 4 - Zoning Map with Tree Protection symbols outlined

Section 8.2.8.6 of the Dún Laoghaire-Rathdown Development Plan 2016-2022 clarifies that:

“New developments shall be designed to incorporate, as far as practicable, the amenities offered by existing trees and hedgerow and new developments shall have regard to objectives to protect and preserve trees and woodlands as identified on the County Development Plan Maps.”

The Plan further states in Section 8.2.8.6 that:

“Where it proves necessary to remove trees to facilitate development, the Council will require the commensurate planting or replacement trees and other plant material. This will be implemented by way of condition”.

The proposed development has been the subject of significant arboricultural input from the outset of the design process. The Design Team has sought to maximise opportunities for tree retention as part of the proposed development to aid in the assimilation of the scheme into its context. However, 78 No. trees are proposed to be removed as part of the development and thus a planting plan, which involves the planting of 200 no. trees is proposed, as described in “section 5.2 Planting”, in the Landscape Report by Mitchell + Associates for the proposed development. This accords with the requirements of the Development Plan in terms of a commensurate planting plan.

It is worth highlighting that 44 of the 78 trees proposed for removal are Category C Trees (Typically including generally poor-quality trees that may be of only limited value) and 18 of the 78 trees proposed for removal are Category U Trees (unsustainable or unsuitable for retention).

The arboricultural input submitted with this application concludes as follows:

“ Overall, the current proposal is quite similar to the previous granted development, though it will result in the loss of a small number of additional trees. Of the 184 items recorded in the survey of trees upon and adjoining the site, the development will result in the loss of 78 items. Of these, it is noted that 44 items were categorised as poorer quality grade “C” that offered limited sustainability, as well as 18 poor or dead category “U” trees that would be recommended for removal on the grounds of poor condition and no sustainability.

The tree losses are a result of a combination of factors. Appreciating that sustainable tree retention requires the conservation of a specific area of ground associated with a tree's rooting system, then issues of development densities, Local Area Plan and Roads Department requirements for roads access alignments including DMURS, as well as standard requirements for engineering and the necessary provision of underground services, all combine to require the unavoidable disturbance and consumption of site space. This contest for available space necessarily impacts upon the ability to sustainably retain trees while making efficient use of site space.

Where possible, tree removals have been cognisant of tree conditions and sustainability issues as illustrated by the tree survey, with poor quality and low sustainability trees being sacrificed first. The landscape design has intended to work with and to retain elements of the existing woodland, while at the same time, making them socially usable. This has been made possible by the adoption of controlled construction techniques and tree protection measures, for example by using low impacts techniques to create access paths and activity areas within the wooded areas. Also, the development design was also cognisant of the historic landscape context and layout, and efforts have been made to retain elements of this into the new landscape”.

All considered, it is evident that certain requirements of the Development Plan are met, where the retention of trees, as far as practicable, has been provided for. In addition, where it has been necessary to remove trees to facilitate development, a commensurate programme for replacement planting has been delivered.

However, on balance, there is a material contravention of elements of section 8.2.8.6 of the CDP, at least in relation to the requirement to incorporate, as far as practicable, the amenities offered by existing trees and hedgerow and to have regard to objectives to protect and preserve trees and woodlands.

It is our view that there are conflicting objectives and Development Plan/LAP provisions, which relate to trees. On this basis, permission can be lawfully granted for the proposed development.

We therefore set out a full justification of this matter in Section 3 of this report.

2.5 Transition Policy

The subject site (zoned Objective A) is located proximate to an area of zoned open space (Zoning Objective F) to the south known as Rockfield Park. Having regard to Section 8.3.2 of the Plan, we submit that a material contravention occurs in relation to this policy, as there is a notable change in scale between the open space lands at Rockfield Park and new development proposed. The wording of Section 8.3.2 is noted as follows:

1. Dun Laoghaire Rathdown County Development Plan 2016-2022

Section 8.3.2 of the Development Plan sets out that:

“The maps of the County Development Plan show the boundaries between zones. While the zoning objectives and development management standards indicate the different uses and densities, etc. permitted in each zone, it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones. In dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones abutting ‘residential areas’ or abutting residential development within mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties.”

For the avoidance of doubt, we confirm that this material contravention is not relation to the zoning of land, but relates to the nature/scale of the transition between the open space zone and residential zone.

It is our considered opinion that the proposed residential development along the shared boundary is an appropriate land use with no perceived negative impact on the area of open space to the south.

We note specifically that Blocks D1, E1 and E2 provide for the passive surveillance of the adjoining park, which is a welcomed improvement to the existing condition. In addition, the proposed development delivers on a new gate lodge café along this boundary, which is considered a significant amenity to the adjacent park, creating permeability and connectivity between the site and the park.

Furthermore, we note the following commentary from ARC in relation to the impact of the proposal from view locations at the adjoining Rockfield Park:

“View 4: From Rockfield Park at the north end of Avondale Court

This view looks North across the Stillorgan Rugby Football Club pitch at Rockfield Park from a location close to the end of Avondale Court. In the existing view, none of the existing buildings in the St Teresa's lands are visible because of trees along the southern boundary of the St Teresa's lands. In the view as proposed, some of these trees are gone and there is an open view into the St Teresa's lands. The original house on St Teresa's lands, Craig More, is seen centrally in the view, beyond apartment buildings seen to the right and left. The new development is seen openly in this view and occupies a substantial part of the view. Given that the lands of St Teresa's are zoned for development of the type proposed in the current application, and given the extent of continuing large scale development in the general area, the proposed development may be regarded by some observers as consistent with existing and emerging trends in the area. The landscape and visual impact of the proposed development from this view location is assessed to be 'moderate' to 'significant' in extent.

It is noted that under Objectives D14 in relation to Character Area 6 in the Blackrock LAP, it is an objective of the Council 'to ensure that development within Character Area 6 be appropriately sited having regard to views to and from the Protected Structure and retain the historic view to the south toward the Dublin Mountains'. At present that view is obscured by trees between the protected structure and Rockfield Park. It is proposed, as part of the subject development, to remove the obstructing trees and to site new buildings so that the view from St Teresa's House to the mountains is restored, and so that there will be an axial view of the house from Rockfield Park.

View 5: From near the south west corner of Rockfield Park.

This view looks north across football pitches at the south west end of Rockfield Park. The club house of Carraig Lawn Tennis Club is seen in the centre of the view, beyond which are trees in the park and on St Teresa's lands. The backs of houses of Avondale Court are seen to the right. In the proposed view, a very small part of the proposed development is just glimpsed in the centre of the view. The remainder of the development is hidden by trees and is represented by a red outline. It is likely that, in winter conditions, other parts of the proposed development will be visible through winter trees. The visual impact of the proposed development from this view location is assessed to range from 'imperceptible' to 'slight'.

View 6: From Rockfield Park immediately north of Carraig Lawn Tennis Club

This view looks north across part of Rockfield Park towards St Teresa's lands. A tall white 20th century building that forms part of the existing St Teresa's complex is seen in the middle distance in the centre of the view. The remainder of the view is occupied by trees in the park and on St Teresa's lands. In the proposed view, the white building is gone and its position in the view is now occupied by apartment buildings. The remainder of the development is hidden by trees and is represented by a red outline. It is likely that, in winter conditions, other parts of the proposed development will be visible through winter trees. The proposed development is a minor element in the view but will be much more visible in winter conditions. The landscape and visual impact of the proposed development from this view location is assessed as 'slight' to 'moderate'.

View 7: From the entrance to Rockfield Park from Brookfield Court

This view looks north east across part of Rockfield Park towards Carraig Lawn Tennis Club, beyond which are trees in the park and on St Teresa's lands. The club house of Carraig Lawn Tennis Club is seen to the right of the existing view. In the proposed view, parts of the proposed development are seen in the middle distance through trees and the netting around tennis courts. The remainder of the development is hidden by trees and is represented by a red outline. In winter conditions, some other parts of the proposed development may be just visible through winter trees. The proposed development is a minor element in the view and the landscape and visual impact of the proposed development from this view location is assessed as to 'slight'.

View 8: From the entrance to Rockfield Park from the south end of Barclay Court

This view looks north east across a turning circle in the foreground and then across part of Rockfield Park. Most of the view is taken up by trees and shrubs on open space that is part of Barclay Court, beyond which are trees in the park and on other lands between the park and St Teresa's. The proposed development is not visible in the view and is represented by a red outline. In winter conditions it is likely that some parts of the proposed development will be visible. The landscape and visual impact of the proposed development from this view location is assessed as 'imperceptible' to 'slight'."

Notwithstanding this, it is our opinion that it could be interpreted that a Material Contravention in respect of the 'transition policy' in Section 8.3.2 is occurring in this instance and this is a matter for An Bord Pleanála to ultimately adjudicate on. It is our view that the proposal is of strategic importance and can be delivered in line with the provisions of the National Planning Framework.

We therefore set out a full justification of this matter in Section 3 of this report.

2.6 Protected Structure & St Teresa's Lodge

The proposed development includes the dismantling and relocation of 'St. Teresa's Lodge' or 'The Gate Lodge' as it is referred to in accompanying documentation. This aspect of the proposed development is addressed in detail in application documentation prepared by Cathal O'Neill Architects and also in the Gate Lodge Strategy Report prepared by Brock McClure Consultants.

1. Blackrock LAP 2015 - (Extended to 2025)

The Blackrock LAP contains a number of objectives relating to protected structures, as follows:

Design Principle 2:

"Layout of development to north of site along Temple Hill to be non - orthogonal to the road. Development to be set back to allow planting buffer to road and to give space around protected structure."

Objective DS2:

"It is an objective of the Council that building heights within those areas identified on Map 12 as 'Height Sensitive Areas' shall take particular cognisance of the setting of the Protected Structures and shall not have an adverse effect in terms of scale, height and massing."

Objective DS10:

"It is an objective of the Council to ensure the protection of the built and natural heritage in the consideration of any proposed layout and design in the redevelopment of the St Teresa's and Dunardagh landholding."

Objective PS1:

"The Planning Authority will seek to safeguard the character and setting of a Protected Structure through appropriate control of the design of new development in the vicinity."

Objective PS2:

"The principal elevations of a Protected Structure should not be impacted upon or obscured by new development that may compromise its amenity."

Objective PS3:

"Significant views of the Protected Structure and the historical context of its setting in the landscape or surrounding urban context, should not be compromised."

Objective PS4

"To encourage compatible new uses for Protected Structures, which will not detract from the architectural and historic character of the building/ structure. Any works and/or extensions necessitated by the proposed new use(s) shall be appropriately scaled and shall 'read' architecturally as new, in line with County Development Plan Policies."

Objective PS5

"To require pre-application discussions with the Conservation Officer."

Objective PS6

"To require an Architectural Heritage Impact Assessment by an architect or other professional with specialist knowledge of building conservation. The report should include an assessment of both works to the Protected Structure and the impact of new development on the character and appearance of the heritage asset."

Objective PS7

"To seek a holistic approach to any development of the overall site. Proposals for the Protected Structure must form part of any application to ensure that the Protected Structure retains prominence on the site."

Objective PS8

"To require a design statement with supporting illustrative material and description of proposed development demonstrating how it has been developed having regard to the built heritage, topography and landscape character of the site."

Objective D11

"It is an objective of the Council to ensure that development within Character Area 5 shall include the creation of an improved setting for St Teresa's Protected Structure. The Council will retain The Gate Lodge to St. Teresa's and necessitate any extensions to ensure its continued use and viability in accordance with policies and objectives set out in Chapter 2 of this Plan."

Objective D12

"It is an objective of the Council to ensure that new development within Character Area 5 will be concentrated to the rear of the part of the site overlooking Temple Hill, be of a high standard of design and be sympathetic to the Protected Structure in terms of its siting, design and materials used."

1. Dun Laoghaire Rathdown County Development Plan 2016-2022

The following policies and provisions of the Development Plan are also relevant:

Policy AR1:

"It is Council policy to:

- i. Include those structures that are considered in the opinion of the Planning Authority to be of special architectural, historical, archaeological, artistic, cultural, scientific, technical or social interest in the Record of Protected Structures (RPS).***
- ii. Protect structures included on the RPS from any works that would negatively impact their special character and appearance.***
- iii. Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the Department of the Arts, Heritage and the Gaeltacht 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011).***
- iv. Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure."***

Policy AR5:

"It is Council policy to: i. Retain, where appropriate, and encourage the rehabilitation and suitable reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of a streetscape in preference to their demolition and redevelopment and to preserve surviving shop and pub fronts of special historical or architectural interest including signage and associated features. ii. Identify buildings of vernacular significance with a view to assessing them for inclusion in the Record of Protected Structures."

As set out above, the application documentation, specifically, the material from Cathal O'Neill Architects and the co-ordinated Gate Lodge Conservation Report set out the basis on which the principle for dismantling and relocation of the Gate Lodge within the site is proposed.

This Report sets out the specific circumstances within which the proposal can be positively considered as follows:

Planning

- There is significant development potential associated with overall lands at St. Teresa's given the residential zoning governing the site, proximity to public transport and Blackrock Village and designation with the Blackrock LAP 2015 as 1 of 3 land banks available for development within the Blackrock Area.
- There is significant national, regional and local policy support for the proposed development, which requires the release of appropriately zoned lands for residential development and the current site is considered optimal to deliver residential development at a highly accessible location.
- There are a number of development objectives contained within the Blackrock LAP, which require the delivery of unrestricted 2 way access to lands at St. Teresa's and St. Catherine's (to the south) and junction improvements along Temple Hill. Design Principle 11 and Objectives DS15 apply specifically.

Traffic

- NRB Consulting Engineers have clearly set out that, following significant investigation and detailed analysis on junction arrangements, improvements required and potential access proposals to serve St. Teresa's, the proposed junction arrangement is reflective of the preferred access strategy for this site, and this is one that is supported by the Transportation Department of Dun Laoghaire Rathdown County Council.
- In order to provide an acceptable vehicular access, the Gate Lodge must be removed and relocated as there is inadequate space to safely provide the required footprint for the

road/footpaths and cycle lanes to serve the site and the lands to the rear, if the Gate Lodge is maintained in the current location.

In addition, there are also other significant Road Safety, Alignment and Traffic Capacity benefits brought about by the proposed relocation of the Gate-lodge and the creation of the proposed junction.

Conservation

- The Conservation Consultant's report has identified a number of considerations which are of particular relevance under the following headings:
 - (a) the extent to which the structures in question are linked to their location of special architectural, historical, cultural or other association;
 - (b) whether the protected structure can be removed and re-located intact;
 - (c) whether the protected structure can be dis-assembled without any significant change in its conservation status (apart from the considerations of locational context referred to above);
 - (d) the extent to which its designed use is capable of being fulfilled in its existing location.

Planning History

Whilst the Board is considering the proposed development which forms the subject-matter of this proposed development, it is important to note that the principle of the proposal to demolish and relocate the Gate Lodge was accepted insofar as An Bord Pleanála granted permission for this aspect of the development under the previous application for this site (ABP – 303804 – 19).

Conclusion

There is a material contravention of certain provisions of the LAP (and CDP) in relation to the preservation of the Gate Lodge. However, other policies and objectives are supportive of the proposed demolition, relocation and reuse of the Gate Lodge building. There are conflicting objectives in the LAP provisions and, on this basis, permission can be lawfully granted for the proposed development. We, therefore, set out a full justification of this matter in Section 3 of this report.

2.7 Institutional Designation and Open Space Provision

The subject site is identified as having the institutional designation. The extent of this designation is considered in detail below as it relates to the site and the current proposal for St. Teresa's.

1. Dun Laoghaire Rathdown County Development Plan 2016-2022

The subject site is governed by a specific objective "To protect and/or provide for Institutional Use in open lands" as identified in the Development Plan zoning map outlined in the figure below:



Figure 5 - Zoning Map with Institutional Designation

The institutional designation afforded to the site is not a land use zoning as land use Zoning Objective 'A' governs the site, which explicitly provides for residential development as the main land use appropriate to the site in principle.

The following policy and provisions of the Development Plan as they relate to this institutional designation are set out and considered below:

Policy RES5

"Where distinct parcels of land are in institutional use (such as education, residential or other such uses) and are proposed for redevelopment, it is Council policy to retain the open character and/or recreational amenity of these lands wherever possible, subject to the context of the quantity of provision of existing open space in the general environs".

This policy goes on to reference the following requirements:

- **Alternative Use** - Where no demand for an alternative institutional use is evident or foreseen, alternative uses may be permitted subject to the zoning objective and retention of the open character of the site being retained.

- **Open Space** - A minimum open space provision of 25% of the total site area (or population based equivalent in accordance with 8.2.8.2 whichever is the greater. This provision must be sufficient to maintain the open character of the site with development proposals structured around existing features and layout, particularly with reference to retention of trees, boundary walls and other features.
- **Density** - Average net densities will be allowed where it is demonstrated that they can contribute towards the objective of retaining the open character and or recreational amenities of the lands.

Section 8.2.3.4 (xi) of the Development Plan also adds the following:

- **Masterplan** - In order to promote a high standard of development, a comprehensive masterplan should accompany a planning application for institutional sites. Such a masterplan must adequately take account of the built heritage and natural assets of a site and established recreational use patterns

A brief response to each of these matters is highlight below:

Alternative Use

'St. Teresa's House' or 'Craigmore' as it was formerly known was built in 1862 and was acquired by the Daughters of Charity in 1925, at which time it was renamed St. Teresa's. This building was mostly recently in use by convalescing nuns who have relocated to St. Catherine's to the south east, since the sale of the site to the applicant. The various outbuildings associated with St. Teresa's are currently being demolished on site and previously included a stables, stable link block, 3 schools from 1926, 1946 and 1962, a west link building and Maryville, which was a purpose built dormitory. The Gate Lodge built around 1866 has been unoccupied for some years now and is thought to be most recently in use as residential.

The most recent use associated with the site and particularly St. Teresa's House and St. Teresa's Lodge is residential. A full history in relation to these buildings is outlined in material from Cathal O'Neill Architects. The buildings are all currently unoccupied with the previous owners (The Daughters of Charity) all currently residing at the site to the south east known at St. Catherine's. The sale of the site to the applicant confirms that this residential use is no longer required. The use of the buildings currently being demolished have long been vacated with uses including residential and educational use no longer required on this site.

Open Space

A review of the open space requirements pertaining to this site confirms that it is the population equivalent standard that applies to the site, that being the higher requirement. We note for the sake of completeness that the 25% requirement, being the lesser requirement, is met.

The population equivalent figure is identified as 3.5 persons for units with 3 or more bedrooms and 1.5 persons for units with 2 or fewer bedrooms. The requirements for open space per person are 15-20 sqm. Based on the proposed development, it is evident that there is a total population equivalent of 833.5 persons (based on a mix of 18 x studios, 220 x 1 beds, 208 x 2 beds and 47 x 3 beds).

This population of 833.5 persons therefore applies a requirement for **12,502.5 - 16,670 sq m open space, which equates to 15-20 sq m per person**. The Development Plan sets out in Section 8.2.3.2 that *"a lower quantity of open space (below 20 sq m per person) will only be considered acceptable in instances where exceptionally high quality open space is provided on site and such schemes may be subject to financial contributions..."*

We note that the current proposal provides for **15,099.7 sq m** of open space (broken down as 11,572.3sq m public open space and 3,527.4 sq m of communal open space). This equates to a provision of 17.9 sq m per person, which does not meet the 20 sq m requirement. The documentation submitted with the application or permission confirms that the open space offering is significant in this case with large open space areas, tree trails, play areas and permeable access to the adjoining Rockfield Park, which in itself is a significant open space offering.

Density

It is our understanding that proposals for density will only be accepted on the basis that the open character of the lands is retained. It is clear from proposals submitted that the open character of the lands has been maintained in that the general arrangement of the buildings on site have had regard to the site framework strategy for this site as set out under the Blackrock LAP 2015. Furthermore, a significant open space offering is delivered (above 25% and at a rate of 17.9 sq m per person).

Masterplan

The design statement enclosed herewith, has set out a masterplan for the delivery of the development to the entirety of the site subject of this application. Clear details are set out in terms of the design evolution with regard clearly given to the built heritage and natural assets of the site with significant proposals for retention of St. Teresa's House, the retention of the existing folly and tree belts and the relocation proposals for St. Teresa's Lodge. Full consideration has been given to the extent of lands available for development at this time.

We note also that in description of the site at St. Teresa's and St. Catherine's to the south the Blackrock LAP sets out on page 28 that *"The site is divided into two distinct parcels. The first parcel include the land surrounding the Protected Structure of St. Catherine's House, formerly Dunardagh House. The second parcel comprises of St. Teresa's, (formerly Craigmole House), also a Protected Structure."* This further supports the approach taken by the applicant to deliver a masterplan for the site which forms the subject of this application only.

Conclusion

There is a material contravention of certain provisions of the CDP in relation to the open space requirements in relation to institutional use. However, as set out in Section 3 of this report, it is clear that the Board may lawfully decide to grant permission for the proposed development, notwithstanding such material contravention.

3 MATERIAL CONTRAVENTION JUSTIFICATION

Notwithstanding that the proposed development constitutes a material contravention of certain (non-land use) policies and objectives of the Blackrock Local Area Plan 2015 and the 2016-2022 Dún Laoghaire-Rathdown County Development Plan – by virtue of the proposed height, residential mix, density, car parking and trees – the justification for deciding to grant permission in circumstances of such a material contravention is set out below.

In circumstances where: (i) the Board has the power to decide to grant permission for a proposed SHD where the proposed development contravenes the development plan or local area plan; (ii) the proposed St. Teresa's SHD does not contravene the development plan or local area plan in relation to the zoning of land; then (iii) the provisions of section 37(2)(b) of the Planning and Development Act 2000 ("the 2000 Act") are relevant to the Board's consideration of this planning application. In this respect, subsection 37(2)(b) states:

(2) (b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that -

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

It is our considered view that An Bord Pleanála can grant permission for the proposal on the following basis:

- i. The proposal is of strategic **importance**;
- ii. There are **conflicting objectives in the Development Plan**; and
- iii. The proposal can be positively considered having regard to **Section 28 Ministerial Guidelines** published subsequent the adoption of the Development Plan.

The justification for this view is now set out below.

3.1 Strategic Importance

It is acknowledged, that the Rebuilding Ireland Action Plan and the Planning and Development (Housing) and Residential Tenancies Act 2016 recognise the strategic importance of larger residential developments (including those over 100 units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.

The significant shortfall in housing output to address current and projected demand is a problem on a national scale, with lack of housing having social and economic ramifications for sustainable national growth. The pressing need for housing development is clearly recognised in the National Planning Framework (e.g. National Policy Objective 32: To target the delivery of 550,000 additional households to 2040; National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location; and National Policy Objective 35: Increase residential density in settlements).

The proposed St. Teresa's Strategic Housing Development, comprising almost 500 units, will make a significant positive contribution to addressing the current national shortfall in housing supply by providing for a total of 493 residential units on zoned, serviced and highly accessible lands at a key infill site at Temple Hill Road.

Having regard to this legislative and policy context and the nature of the proposal submitted, it is considered that this proposed Strategic Housing Development is undoubtedly of strategic importance for the purposes of section 37(2)(b)(i) of the 2000 Act as amended. Specifically, we note that the proposed development is deemed to positively contribute to meeting the deficient or national shortfall in housing supply.

In these circumstances, and notwithstanding the material contravention of the policies and objectives of the LAP and CDP, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b)(ii) of the Planning and Development Act 2000, as amended.

3.2 Conflict in Development Plan Policy

It has been identified that there are conflicting objectives and provisions within the CDP insofar as the proposed development is concerned with regard to the preservation and protection of trees. Whilst there is an objective to protect and preserve trees and woodlands within the site, as identified on the relevant Development Plan map, there is also a Development Plan provision to provide for the removal of trees "*where necessary to facilitate development*" (Section 8.2.8.6). Section 2.4 of this report has set out the matter in detail.

Equally, there is conflict between both the provisions of the Dun Laoghaire Rathdown Development Plan 2016-2022 and the Blackrock LAP 2015 in relation to matters of height, residential mix and residential density, insofar as the proposed development is concerned.

We note specifically that Sections 2.1, 2.2 and 2.3 have examined the conflicting objectives and provision of both plans in this regard.

Therefore, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended and specifically in relation to section 37(2)(b)(ii) for conflict in Development Plan policy.

3.3 Compliance with Government Policy and Section 28 Ministerial Guidelines

The following section demonstrates the manner in which the proposed building heights, residential mix, residential and residential density are justified in the context of recent National Planning Policy and Section 28 Ministerial Guidelines, which seek to increase residential densities and height, reduce car parking and provide for flexible residential mix options on zoned serviced lands adjacent to public transport corridors. It is reiterated that the ministerial guidelines referenced below were published

post the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022, which is a key consideration for this site and proposal.

The national policy and ministerial guidance documents now considered include:

- **Project Ireland: National Planning Framework 2040.**
- **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guidelines 2020).**
- **Urban Development and Building Heights, Guidelines for Planning Authorities (2018).**

3.3.1 National Planning Framework – Project Ireland 2040

The '**National Planning Framework 2040**' sets out the following key objectives (in **bold** below). A response from the applicant on how these objectives are met is set out thereafter:

National Policy Objective 2a: "A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs."

- The current proposal provides for 493 residential units at in a built up urban location, close to highly accessible public transport nodes (550 and 700m from Sea Point and Blackrock DART stations, respectively) in the southern Greater Dublin Area. The proposal provides for a residential density of 123 units per ha gross figure and 165 units per ha net figure and is therefore supportive of the objective to accommodate population growth in the Blackrock suburb of Dublin.

National Policy Objective 4: "Ensure the creation of attractive, liveable well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being".

- The current proposal for 493 residential units is delivered in the form of a 1-10 storeys development that is exceptionally well-designed. The design architects, O'Mahony Pike, have delivered a scheme that has been mostly informed by the Site Framework Strategy governing the site and as contained within the Blackrock LAP but also the presence of Protected Structures on site; the presence of Temple Hill Road to the north, a substantial dual carriageway; and the presence of Rockfield Park and adjoining residential development to the south, west and east of the site.
- The design has considered, in detail, the existing levels of residential amenities at adjoining residential developments. We note in particular that developments at St. Vincent's Park, St. Louise's Park and Barclay Court were considered in detail at a very early stage in the design evolution of the current proposal. Appropriate setbacks and separation distances to these dwellings have been maintained as set out within this accompanying documentation. Additional height is only proposed at appropriate locations within the development i.e. along Temple Hill and along Rockfield Park. Height sensitive areas (around the existing Protected Structure and at adjoining boundaries) are also respected.

National Policy Objective 11: "In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth."

- The subject site is significantly underutilised and is located within an existing built up area. The site is appropriately zoned for residential development; is located proximate to high frequency public transport nodes and is identified as having significant development potential within the Blackrock LAP 2015. The site measures c. 3.9 ha and is considered

meaningful in terms of its potential to deliver a strategic housing development of exceptional design.

- The proposal will offer a range of wider planning gains including an exceptional public realm proposal that includes significant open space provision; improved permeability across the site from Temple Hill to Rockfield Park; a new and improved setting for St. Teresa's House (a protected structure) and local facilities such as a café, Crèche and residential amenity offering for future residents.



Figure 4 - Site Context

- The proposal will also add a significant population to the local Blackrock area in proximity to the commercial centre of Blackrock and public transport corridors. The movement of new residents on foot or cycling will contribute to the vibrancy and vitality of Blackrock and other proximate commercial centres.

National Policy Objective 13: “In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.”

- The proposed development has been designed as an exemplar architectural model by award winning architects, O'Mahony Pike Architects.
- The development will meet or exceed all relevant performance criteria, as set out in this report.
- The proposed building heights are cognisant of the LAP height strategy while seeking to provide legibility and variety in building form to enhance the overall masterplan and improve the quality of the public realm.
- In line with the design objective for improved pedestrian permeability, expansive open landscaped areas are identified in order to strengthen visual connectivity through the scheme.
- The provision of an improved public realm along Temple Road is extended in between blocks B2 and B3 by providing a series of stepped lawns leading up to the proposed resident amenity clubhouse and St. Teresa's House. This generous landscaped space provides an open visual connection into the development.

- A sequence of open spaces running between Rockfield park and Temple Road are interwoven into the masterplan to provide a variety of amenity value and experience.
- These comprise of terraced gardens leading up from Temple Road and arriving at a plaza containing a Clubhouse and central resident's amenities. pedestrian routes either side of St. Teresa's house lead into the central parkland setting which connects to the Woodland Park and into Rockfield park beyond to the South.
- The masterplan provides for a complimentary balance between new building interventions, retention of existing historical buildings and the enhancement of existing and new landscape features.
- Given the large area of the site and the extensive green open spaces, an opportunity exists to ensure buildings are predominantly looking onto open green spaces.
- While the building disposition is guided by the LAP, every effort is made to provide due N/S orientated buildings in order to maximise daylight access to the apartments.

National Policy Objective 32: "To target the delivery of 550,000 additional houses by 2040".

- The current proposal will deliver 493 residential units, contributing towards the Government's objective of 550,000 houses by 2040. We ask the Board to note that the applicant is ready to implement this permission without delay, should a grant be forthcoming.

National Policy Objective 33: "Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location."

- As set out above, the site is considered a key infill site and one that is appropriate for increased residential densities and heights. This is particularly the case given proximity to public transport nodes. Most notably, the site is located adjacent to a proposed Bus Priority Route at Temple Hill (N31) and is proximate to DART stations at Seapoint (6m walk) and Blackrock (11 min walk) and is therefore well placed in terms of exceptional public transport accessibility.
- The current proposal for 493 residential units is the subject of an exceptional design strategy and one that has carefully considered existing levels of residential amenities at adjoining residential developments.
- Variations in building heights, scales and forms are considered in relation to adjoining developments and create a visual interest in the streetscapes both external and internal to the site.
- Overall there is considerable variety in the scale and forms of buildings that is made to appear cohesive by the use of a limited number of construction materials and the use of similar elements and detailing across the elevations. Thus, the materials and building fabric well considered.
- The location, scale and massing of the proposed buildings along these edges have been carefully modulated to protect the amenity of these properties. Landscape screening and generous separation distances further improve the relationship.

National Policy Objective 35: "Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site based regeneration and increased building heights".

- The site is a large infill site in the heart of Blackrock and is one of 3 sites earmarked within the Blackrock area for significant development by way of its designation as a site with the Site Framework Strategy. These sites are of strategic importance both within the settlement of Blackrock, within the County area and on a national scale and increased residential densities and height can therefore be positively considered.

- The proposed development will provide for an appropriate increase in residential density on an infill site within an existing urban area. (123 units per ha gross figure and 165 units per ha net figure based on a net site area of 3.9 /2.98 ha and a proposal for 493 units) on an infill site within an existing urban area.
- The existing area is inherently low density with large dwelling on substantial plots. An inefficient use of well-located land. The subject proposal aims to rebalance residential density in the area and provides a variety of studio, 1, 2 and 3 bed unit typologies to cater for the current lack of supply of this type in the area.
- Proposals for heights of 1-10 storeys are well considered and cognisant of established levels of residential amenity in the area. It is on this basis that the proposed residential density is considered to align with National Policy Objective 35

In all the circumstances as set out above, it is submitted that permission should be granted for the proposed St. Teresa's SHD having regard to relevant policy of the Government and, in particular, key principles of the National Planning Framework.

3.3.2 Sustainable Urban Housing: Design Standards for New Apartments (2020)'

The 'Sustainable Urban Housing: Design Standards for New Apartments (2020)' are Ministerial guidelines issued under section 28 of the 2000 Act. Where specific planning policy requirements of such guidelines differ from the provisions of the Development Plan, then those requirements shall, to the extent that they differ, apply instead of the provisions of the Development Plan per section 9(3)(b) of the 2016 Act.

Indeed, Section 1.20 of the 2020 Guidelines states as follows:

"Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements."

The Sustainable Urban Housing: Design Standards for New Apartments (2020) were, self-evidently, issued subsequent to the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022 and this is a key point for consideration by the Board in addressing the application for permission in respect of the proposed St. Teresa's SHD in the context of the 2020 Guidelines.

Residential Mix - SPPR 1

With regard to residential mix, SPPR 1 of the Guidelines states:

"Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s)."

The proposed development mix is as follows:

- 18 no. studio units (4%)
- 220 no. 1 bed units (44%)
- 208 no. 2. bed units (42%)
- 47 no. 3 bed units (10%)

Accordingly, the proposed development complies with the requirements of SPPR1, in circumstances where 48% of the units comprises one-bedroom and studio units, of which only 4% are studio type units. In circumstances where SPPR1 of the 2021 Guidelines differs from the provisions of the Development Plan:

“Apartment developments should provide a mix of units to cater for different size households, such that larger schemes over 30 units should generally comprise of no more than 20% 1-bed units and a minimum of 20% of units over 80 sq.m.”

in relation to the permissible amount of one-bedroom and studio type units, then the requirements of SPPR1 apply instead of the provisions of the Development Plan and permission may be granted by the Bord notwithstanding the material contravention of the provisions of the Development Plan in relation to residential mix.

3.3.3 Urban Development and Building Height Guidelines (2018)

The ‘Urban Development and Building Heights, Guidelines for Planning Authorities (2018)’ which were issued in December 2018 under section 28 of the 2000 Act set out national planning policy guidelines on building heights in relation to urban areas. Again, these 2018 guidelines post-date the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022.

Section 1.14 of the Guidelines states reflects the position under the 2016 Act:

“Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans/ schemes need to be amended by the relevant planning authority to reflect the content and requirements of these guidelines and properly inform the public of the relevant SPPR requirements.”

Under section 3.1 of the Guidelines, three following broad principles or criteria must be applied in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines:

- ***Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?***

As set out in Section 3.3.1 above, the proposed St. Teresa's SHD does secure the relevant objectives of the National Planning Framework. The location of the proposed development is a unique opportunity for the delivery of strategic housing in a sustainable manner in accordance with national strategic planning policy.

- ***Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?***

The Statement of Consistency enclosed herewith has also set out how the current proposal complies with the provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022. It is acknowledging that the Dún Laoghaire Rathdown County Development Plan 2016-2022 was prepared and adopted before the 2018 Building Height Guidelines came into effect. Whilst, the Development Plan is currently the subject of a review process, the new development plan has not yet been adopted nor has the existing development plan been varied so as to implement the requirements of Chapter 2 of the Building Height Guidelines.

- ***Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?***

With regard to existing policies and objectives of the Dún Laoghaire Rathdown County Development Plan 2016-2022, there is a clear misalignment with the National Planning Framework with regards to height. Specifically, the National Planning Framework provides for an increased residential density in settlements through a range of measures including increased building heights: see, for example, National Policy Objective 35. By contrast, the Local Area Plan and Development Plans' policies and objectives on height by comparison are restrictive.

Policy RES3:

"It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- **'Sustainable Residential Development in Urban Areas' (DoEHLG 2009).**
- **'Urban Design Manual - A Best Practice Guide' (DoEHLG 2009).**
- **'Quality Housing for Sustainable Communities' (DoEHLG 2007).**
- **'Irish Design Manual for Urban Roads and Streets' (DTTaS and DoECLG, 2013).**
- **'National Climate Change Adaptation Framework - Building Resilience to Climate Change' (DoECLG, 2013).**

In this context, it is clear that certain pre-existing policies and objectives of both the LAP and the CDO do not align with and support the objectives and policies of the National Planning Framework.

In these circumstances, the SPPRs stated in the Building Heights Guidelines take precedence over policies and objectives of development plans and local areas plans, where such conflicts arise.

Specific Planning Policy Requirements

SPPR 3A of the Urban Development and Building Heights Guidelines 2018 requires applicants for planning permission to set out how the proposal complies with the *"criteria above"*. The *'criteria above'* refers to the Development Management criteria at Section 3.2 of the Guidelines, which are discussed below.

If the Board is satisfied that the criteria under section 3.2 have been met, it *"may approve such a development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise"*. The paragraph introducing SPPR 3 itself is set out below for ease of reference, following which, each of the criteria (denoted by italics) are considered in turn:

"Where the relevant planning authority or An Bord Pleanála considers that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply the following Strategic Planning Policy Requirement under Section 28(1C) of the Planning and Development Act 2000 (as amended).

SPPR 3 (A)

"It is a specific planning policy requirement that where;

- (A)**
- 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and***
 - 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise."***

The manner in which the proposed St. Teresa's SHD complies with the relevant criteria set out in the Building Height Guidelines 2018 is demonstrated below in sub-section 'Development Management Criteria'. The consistency of the proposal with the National Planning Framework has been considered above.

Development Management Criteria

The Guidelines, clearly set out that in the event of making a planning application, the applicant shall demonstrate to the satisfaction of the Planning Authority/An Bord Pleanála, that the proposed development satisfies a number of criteria. The relevant criteria, following by an applicant response is set out below, followed by the applicant's response:

At the scale of the relevant city/town:

- ***"The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.***
- ***Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/ enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.***
- ***On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape."***

Applicant Response:

- The site is situated immediately adjacent to a proposed Bus Priority Route as identified by the Dun Laoghaire Rathdown Development Plan 2016-2022 and is also located within 550m and 700m of 2 DART stations (Sea Point and Blackrock). In these circumstances, it is clear that the site is very well served by public transport with high capacity, frequent service and good links to other modes of public transport.
- Careful consideration has been given to the successful integration of the proposed development, including buildings of increased height, into the existing character and topography of the site and area. It should be noted that additional height is only proposed at locations where topography and existing site characteristics are favourable i.e. along Temple Hill and Rockfield Park.

The topography along Temple Hill allows for a split level urban block, which forms a strong relationship with the natural topography and natural level change at this location.

At Rockfield Park the proposal for additional height at Blocks E1-E5 forms a legible and defined edge to the Park area, where passive surveillance and views are the focus in terms of design.

Block D1 overlooks the open space area to the fore of St. Teresa's and also provides for the passive surveillance of the tree lined avenue to the south east of the site. The proposal for additional height at this location frames the development.

A Landscape and Visual Impact Assessment prepared by ARC Architectural Consultants is submitted with the application for permission in compliance with the above criteria. The report makes the following conclusion:

"Visibility of the proposed development is likely to be largely restricted to locations in close proximity to the application site. While the construction of

the proposed development is likely to result in a significant change to the visual environment from some nearby viewpoints, having regard to the planning history of the site, the pattern of residential and apartment development that has taken place on the sites of larger detached houses in the area and local, regional and national planning policy for the densification of the urban area, these changes are considered to be consistent with emerging trends for development in the area."

- The proposed development makes a positive contribution to place making by creating a new edge to Temple Hill Road dual carriageway. The removal of the existing site boundary wall, its replacement with a new low wall and railing and the widening of the planted verge along the full length of the northern site boundary with Temple Hill Road , provides open vistas into the site and lands beyond.
- It is proposed that a new café at the edge of Rockfield Park will bring a new public use into the development that can be enjoyed by all. When seen from Rockfield Park, its association with St. Teresa's House can be understood. Its immediate surrounding area will be suitably landscaped with gravel paths, permanent seating and additional planting to enhance the public realm.
- The scale and height of the 'C' blocks are therefore subordinate to St. Teresa's House completing a composition whereby the protected structure remains the focal point of the development while enjoying clear uninterrupted views directly south towards Rockfield Park and the Wicklow mountains.
- The location and orientation of the buildings within the centre of the scheme are derived from the objectives of the master layout plan and the integration with identified character zones, landscaped areas, view corridor and protection of the setting of St. Teresa's House.

At the scale of district/ neighbourhood/ street:

- ***"The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.***
- ***The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.***
- ***The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of "The Planning System and Flood Risk Management – Guidelines for Planning Authorities" (2009).***
- ***The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.***
- ***The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood."***

Applicant Response:

- The proposed removal of the site boundary wall along the southern boundary with Rockfield Park allows for the extension of the parkland into the development. The proposed development will result in the site being opened and made accessible to the public. The central open space to the south of St. Teresa's House will become part of the public realm and a focal point of the site landscape. A network of streets and paths link spaces and create new routes through the site. Variations in building

heights, scales and forms are considered in relation to adjoining developments and create a visual interest in the streetscapes both external and internal to the site.

- The proposal responds to its natural and built environment and makes a positive contribution to the urban neighbourhood. Around the site, due consideration is given to the different physical conditions and characteristics of the neighbourhood. The site layout allows for retention of the majority of important trees and retains the woodland characteristic found at the southern and eastern boundaries and to the front of St Teresa's House.
- The proposed development comprises a range of building forms, from modest footprint point buildings to extended footprint buildings that hug the edge of the woodland areas. Accordingly, the proposed development is not monolithic and clearly avoids long, uninterrupted walls of building in the form of slab blocks.
- The buildings along Temple Hill are proposed as simple, elegant forms with a limited palette of materials selected to offer a coherent architectural language that is utilised across all buildings in the site. The main cladding material is to be brick with the selected areas finished in either metal cladding panels or glass gladding with an opaque coloured backing. Principal facades are extensively glazed and balconies and terraces will be completed with metal guarding with glass infill. Overall there is considerable variety in the scale and forms of buildings that is made to appear cohesive by the use of a limited number of construction materials and the use of similar elements and detailing across the elevations. Thus, the materials and building fabric well considered.
- Temple Hill Road (N31) is a key thoroughfare, built as a dual carriageway to skirt around Blackrock village centre. Along this most public frontage, the boundary has been set back and the buildings are set back from the carriageway by between 10.1m and 16.1m. The arrangement of the 5 no. proposed buildings along Temple Hill Road allows visual and physical connection between the road and the centre of the site. The detached footprints of the buildings and the separation distances across Temple Hill Road which are between 39.1m and 44.4m allow for higher development along this frontage. The buildings on the north side of Temple Hill Road are for the most part 2 storey dwellings with a 2 storey car showroom building opposite the northernmost block A1. The considerable separation distances between buildings, the tree lined central median in the dual carriageway and the proposed tree lined recessed site boundary make it possible to propose taller structures along this frontage. Accordingly, the proposal enhances the urban design context key thoroughfares, thereby enabling additional height in development form to be favourably considered.
- Block B1 provides an opportunity for a sense of arrival and to make this gateway location into Blackrock Village with a 'visual marker' building which in turn enhances legibility and improves urban design by knitting the proposed development into the wider urban structure.
- A 10m setback verge with a line of semi-mature trees is proposed the length of the boundary along Temple Road in order to enhance the public realm and provide a green buffer to the street edge.
- Blocks A1 and B4 are proposed as 5 storey blocks located at either end of this frontage. Blocks B2 and B3 are proposed as 8 storey blocks flanking a terraced new open space that connects Temple Hill Road with a plaza at the north side of St Teresa's House. This open space provides direct access to the raised level of the site and reveals views through to the resident amenity building and to the newly exposed rear of St. Teresa's House. Block B1 is proposed as a 10 storey block , located at the point where Temple Hill Road leads into the more urban context of

Blackrock bypass. This taller block marks the transition from the suburban to the more urbanised part of Blackrock. Thus, the proposed development makes a positive contribution to the improvement of legibility through the site.

- The proposed development is a residential apartment development offering a range of buildings and apartment types, from studio apartments to 3 bed apartments. St Teresa's House is to be fully refurbished and converted into 6 no. apartments. A number of units within the development in Blocks B1, B2, B3 and D1 will have "own door" access. Block E2 comprising 50 apartments is proposed as social and affordable housing. The gate lodge building is to be dismantled, moved to a new location on the southern boundary with Rockfield Park. It will be reconstructed, refurbished, extended and converted into café use.
- An appropriate mix of units types and sizes are incorporated into the development proposal. Notably, 18 studio units, 220 no. 1 bed units, 44 no. 2 bed units (3P), 166 no. 2 bed units (4P) and 47 no. 3 bed units. are proposed within the new development. A number of own door units are delivered, which is a welcomed approach to development.

At the scale of the site/building:

- ***"The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.***
- ***Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings - Part 2: Code of Practice for Daylighting'***
- ***Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution."***

Applicant Response:

- The form, massing and heights of the proposed buildings in the development have been carefully modulated to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. The entire development has been analysed in a study carried out by Integrated Environmental Solutions (IES). The detailed analysis has informed the design and modifications have been made to the buildings and /or to layouts in response to the test results achieved.
- According to IES "Across the proposed development, 92% of the tested rooms are achieving ADF values above the BRE and BS 8206-2:2008 guidelines when Living/Kitchen/Dining spaces are assessed as whole rooms against a 2% ADF target. This increases to 94% when the results from the sample set are extrapolated to account for all spaces within the development.

Furthermore, 95% of the tested rooms are achieving ADF values above the BRE and BS 8206-2:2008 guidelines when Living/Kitchen/Dining spaces are assessed as whole rooms against a 1.5% ADF target. This increases to 97% when the results from the sample set are extrapolated to account for all spaces within the development.
- As noted by IES "Compensatory measures have been incorporated into the design of the proposed development to offset reduced daylight performance in a number of bedrooms and LKDs. The floor areas of 91.68% of all apartment units are above the minimum area requirements setout within national policy. Incorporating larger apartment units makes it

more difficult to achieve the recommended internal daylight levels. Furthermore, the number of dual aspect units and communal open space provisions are above minimum recommendations. The incorporation of these compensatory measures more than offset the reduced daylight performance when the proposed development as a whole is considered."

Specific Assessments

The guidelines set out that in order to support proposals at some or all of these scales, specific assessments may be required, and these may include:

- ***"Specific impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measures to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.***
- ***In development locations in proximity to sensitive bird and / or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and / or collision.***
- ***An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.***
- ***An assessment that the proposal maintains safe air navigation.***
- ***An urban design statement including, as appropriate, impact on the historic built environment.***

Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate."

Applicant Response:

- Matters of wind, microclimate, bats and birds are fully assessed within the EIAR submitted with this application.
- OCSC has advised that microwave links used by the telecoms companies use direct "line-of-sight" to connect from one point to another, so if a tall building is placed along that line it could block the signal path. In this case, this issue is not considered to pose a risk.
- OCSC further stated that there are two types of links, the main trunk routes which typically use tall masts and high sites to avoid obstructions, and the smaller mini-links that connect from one mobile phone site to another and are at lower levels.

It is more likely that buildings would interfere with a mini-link, however, this is not regarded as an "important telecommunication channel" as it can be re-directed and an alternative route found.

The most likely interference with a main microwave link would occur in the city where there are a smaller number of tall masts operating.

It is in consideration of the above, the proposal allows for the retention of telecommunications channels, including microwave links.

- In relation to safe air navigation, prior to the submission of the 2019 application for permission in respect of the site, the applicant contacted the Irish Aviation Authority (IAA) and the Dublin Airport Authority (DAA) to ensure that the permitted proposal maintains safe air navigation. Both the IAA and DAA confirmed at that time that the (then proposed and now permitted) development did not raise issues of concern. Copies of the 2021 application for permission have been sent to both the IAA and DAA, so as to enable those bodies to make submissions or observations on the application to the Board.
- A Design Statement has been prepared by O'Mahony Pike Architects and is submitted with this application for permission.
- An EIAR has been prepared and has been submitted with the application for permission. In addition, an Appropriate Assessment Screening Report has been prepared and is submitted

with the application for permission. Accordingly, the relevant environmental assessment requirements have been complied with.

Based on the foregoing analysis, the proposed development complies with the relevant criteria set out in the Building Height Guidelines 2018 and, in particular, the SPPR 3 and the relevant development criteria requirements. Therefore, the Board is enabled to grant permission for the proposed development, notwithstanding that certain of the building heights materially contravene provisions of the LAP and CDP in terms of building height.

3.4 Permitted Development

Section 37 (2)(b)(iv) of the Planning and Development Act, 2000 (as amended) also states that permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

We note the previous grant of permission at the subject site for development pursuant to the application made under ABP-303804-19, which established a number of development principles including the dismantling and relocation of the gate lodge; the granting of planning permission for a residential development on lands governed by and institutional designation; and the granting of permission for development that deviated from a number of policies, design principles and objectives of the Blackrock LAP 2015.

Accordingly, on this additional basis, the Board is enabled to grant permission for the proposed development, notwithstanding the material contravention of certain provisions of the Development Plan.

4 CONCLUSION

Where specific planning policy requirements of Ministerial guidelines differ from the provisions of the Development Plan, then those requirements shall, to the extent that they differ, apply instead of the provisions of the Development Plan per section 9(3)(b) of the 2016 Act. Moreover, section 10(3)(b) expressly references a situation where the Board grants a permission in accordance with section 9(6)(a), in material contravention of the development plan or local area plan. Indeed, both the 2018 and 2020 Guidelines specifically state that, where SPPRs are stated in those documents, they take precedence over any conflicting, policies and objectives of development plans and local area plans, such that the Board “may approve such a development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise”

In the context of increased **height**, the most relevant of these requirements is SPPR 3A of the Building Height Guidelines. It is submitted that the Development Management criteria under Section 3.2 of the Guidelines have been satisfied in this regard by the development as proposed and that, accordingly, the Board may grant permission for the proposed development even if it considers that it would be a material contravention of building height policy and standards under the Development Plan, having regard to the terms of the relevant national policy discussed above and SPPR 3A of the Building Height Guidelines, in particular.

In the context of **residential mix**, SPPR 1 of the 2020 Apartment Guidelines applies and the proposal is considered to comply with this Specific Policy requirement. We note specifically that no more than 48% of the proposed units are one-bedroom or studio type units.

In relation to **residential density**, the proposal clearly supports the key policies of the National Planning Framework to deliver appropriate residential densities and brownfield and infill sites

In relation to **tree preservation**, there are contradictory objectives in the DLRCC Development Plan on requirements to preserve trees with provision made in the Development Plan to remove trees to facilitate development and to provide for commensurate planting, where such trees are removed.

In relation to **the proposals for dismantling and relocation of the gate lodge; and the institutional designation and open space requirements**, the proposed St. Teresa's SHD is a development of strategic importance given that it clearly delivers on the key policies of the National Planning Framework in terms of expediting residential development. It is also submitted that the Board may

grant permission having regard to the pattern of development and, in particular, the 2019 permission granted.

As set out in detail in this report there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding material contravention of certain provisions of both the Blackrock Local Area Plan 2015 and the Dun Laoghaire-Rathdown County Development Plan 2016-2022.

In the event that the Board were to grant permission, the Board's "*reasons and considerations*" should reference the matters under Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the Development Plan. It is apparent from section 10(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself.

Having regard to the justification set out within this statement, it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with national planning policy and statutory guidelines and on the basis that there are conflicting provisions in the Development Plan and Local Area Plan.