

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

24<sup>th</sup> August 2004

***Appeal of Dublin City Council's decision in respect of planning application 1123/04***

Dear Sir,

On behalf of the Green Party / Comhaontas Glas, we the undernamed wish to appeal the decision of Dublin City Council in respect of the planning application with reference number 1123/04. I further wish to request that an oral hearing of this appeal is granted.

For the purposes of identifying the application in question, I include on the next page following the full identifying details associated with this application by Dublin City Council. This is followed by details of the ground for granting our appeal.

I am also enclosing evidence of the third-party observation on the planning application, made in our names on March 16<sup>th</sup> 2004, and the appropriate fee. Please note that only the name of Claire Wheeler appears on the acknowledgement letter, but you will note from the planning file that all four names below appear on our original observation.

Yours faithfully,

**Claire Wheeler**, former member of Dublin City Council (Pembroke ward)

**Ryan Meade**, former member of Dublin City Council (Rathmines ward)

**John Gormley TD**, Dublin South East constituency

**Cllr Ciarán Fallon**, Dun Laoghaire / Rathdown County Council (Dundrum ward)

<b>APPLICATION No.</b>	1123/04
<b>PROPOSAL</b>	Permission is sought for a new riverside public open space including pedestrian bridge across the River Dodder and 92 no. apartments as follows: A 4-storey and part 5-storey block B consisting 3 no. one bed, 5 no. two bed, 9 no. three bed apartments with south facing balconies at ground, first, second and third floor and roof terraces on all sides at fourth floor. A 2- storey and part 3-storey Block C consisting 14 no. two bed apartments with south facing balconies on all floors, north facing terrace at ground floor and north and south facing roof terraces at second and third floor. A 3-storey, part 4-storey part 5-storey Block D consisting 9 no. two bed, 11 no. three bed apartments with south and east and north facing balconies on all levels, ground floor terraces facing north, east and west at third floor. A 3-storey part 4-storey Block E consisting 21 no. two bed, 20 no. three bed apartments with south or south east facing balconies on all levels and ground floor west/north west terrace and roof terrace on all sides at third floor level. Together with 18 no. surface car spaces and 121 car spaces in a basement car park on lands known as Scully's Field between the Ramleh Park Estate and the River Dodder bounded by Strand Terrace Milltown to the west and accessed from the east via a new road to be constructed alongside the river terminating at a new junction on Clonskeagh Road adjacent to Clonskeagh Bridge for McGarrell Reilly Contractors Ltd.
<b>LOCATION</b>	(Scullys field)Lands between Ramleh Park Estate,, River Dodder &, Strand Terrace, Milltown, Dublin 6
<b>APPLICANT</b>	McGarrell Reilly Contractors Ltd Block D, Iveagh Court, Harcourt Road, Dublin 2
<b>DATE LODGED</b>	14-Jun-2004
<b>ZONING</b>	
<b>APPLICATION TYPE</b>	Permission

## ***Grounds for granting an appeal***

### **Zoning**

The proposed development is in material contravention of the Dublin City Development Plan 1999, in that it is incompatible with the Z9 zoning of the site, "To preserve, provide and improve recreational amenity and open space".

In the 1999 Development Plan, 'residential' is specified as an 'open for consideration' use for lands zoned Z9. However, this use may only be permitted where the development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and development of the area.

The proper planning of the area would entail consideration of the unique amenity values and character provided by the site, and its importance in a regional context. There is no evidence that the Planning Officer has had regard to these aspects in his consideration of this application. Instead, he has applied a criterion whereby residential development of any scale is allowable provided that the proportion of the site that remains available as public open space is 70%. In his report he concludes that:

...the proposal in general, by proposing in excess of 70% of the 2Ha (5 acre approximately) site to be ceded into public ownership for the benefit of the city accords with the overall zoning objective.

Without conceding that the figure of 70% is accurate in this case, we contend that this is an entirely arbitrary criterion and should not be used to judge compatibility with the objectives of the Development Plan.

It is worth noting that an identical 70% criterion was used to justify the City Council's granting of planning permission to a proposal on Merrion Road, which was subsequently refused by the Board (ref. 3750/02: ABP Ref. PL29S.203391). Furthermore, in its draft City Development Plan 2005, the planning department of Dublin City Council proposed that residential development on up to 30% of a site should be explicitly allowed in the Z9 zoning objective, a proposal which was rejected by the elected members of City Council.

The lack of detailed consideration of the unique features of the site in question, in addition to the precedent of applying the 70% / 30% split in other cases, indicates that the Planning Officer has not adequately considered the compatibility of this proposal with the Development Plan, but has instead applied an arbitrary criterion which is not derived from the Development Plan. Neither is this criterion derived from consideration of the specific site, as would be required to have regard to the proper planning and development of the area.

### **Claim that public open space represents 70% of application**

The claim that 70% of the site will be available as public open space is in any case open to question. In his report, the Planning Officer notes that the 70% figure "would appear to include the escarpment slopes." It is clear that these slopes will have no public amenity value, and indeed it seems likely that they will not be open to the public at all.

Furthermore, the 70% figure would appear to include areas which are currently available to the public as open space, including the existing riverside walk and areas at the western and eastern ends of the site.

### **Undesirable effects on the permitted uses**

In his consideration of this proposal, the Planning Officer has failed to assess whether the allowing of residential development would have 'undesirable effects on the permitted uses', as required by the Development Plan. It is clear that the development of bulky apartment buildings on the deepest part of the site will have a severely prejudicial effect on the permitted uses, in that the open space element of the site will be reduced to a narrow strip of parkland overlooked by apartment buildings and associated balconies. Further, the site as a whole will entirely lose its unique regional importance as a relatively wide area of natural parkland area alongside the River Dodder.

In effect, the net gain in terms of public space, should this proposal go ahead, will be a marginally expanded riverside walkway and a new pocket park. As a riverside walkway is already available, and is not in any danger of being made unavailable, these improvements are not significant when set against:

- loss of natural parkland character;
- loss of portion of the site with greatest potential to fulfil the Development Plan objectives, i.e the deepest part between the escarpments and river;
- loss of habitats of birds and mammals;
- proximity of open space to private development.

### **Development plan objectives**

The Dublin City Development Plan 1999 contains a specific objective to create a linear park along the Dodder. Further, the 1999 Plan states, in objective 9.3.30, that it is an objective to provide a number of parks in the Ranelagh and Milltown area including at Scully's Field. The potential of Scully's Field in the context of these objectives lies in the depth of the site, which point is well documented in the draft Framework Study for Scully's Field, carried out by Urban Projects for Dublin City Council and appended to our original observation. Between Herbert Park and Bushy Park the only areas of comparable depth are Orwell Park and Dartry Park. If Scully's Field is reduced to a strip of narrow parkland alongside the river, this will have a severely prejudicial effect on the overall park objective.

### **Access**

The site of the proposed development is not served by access to a public road. In order to provide access as described in the application, a roadway must be constructed over land which is owned by Dublin City Council.

The planning application includes a letter from Dublin City Council indicating consent to include the City Council's property in the planning application. However, the functional unit of Dublin City Council which provided this letter will have no role whatsoever in deciding whether the land may be used in the manner described in the planning

application. As noted in the Planning Officer's report, this decision – "to sell the land or grant a right of way over it" – is a reserved function of the elected members of Dublin City Council.

There is no reason to believe that the members of Dublin City Council will be amenable to any such request, on the contrary it must be considered that they are likely to refuse it – evidence of this position is contained in the number of objections to the application on file from members of Dublin City Council, the repeated recommendation of rejection of the planning proposal by the South East Area Committee of City Council, and public commitments to the 'land-locking' of the site given by City Councillors over many years.

Whether this letter of consent should have been provided to the developer is perhaps beyond the scope of the Board's consideration, but in any case the Planning Officer in his decision should have considered that this letter has no practical effect. In section H of his report, "Concluding Assessment of Planning Issues," although he notes the elected members' role, he states that the application is "supported by letters of consent to make the planning application from the respective owners of the access lands, Starr Holdings Ltd. and Dublin City Council." It is our contention that the letter from Dublin City Council cannot be held to be a letter "from the owner of the access lands", in that the functional unit which provided the letter does not have any powers in respect of disposing of these lands or granting the required access over them.

The Planning Officer should therefore have considered that no consent existed to facilitate road access to the development.

It should be further noted that in refusing a previous application for development on the site in 1991 (reference number 2049/91), the Planning officer cited as one of the reasons:

The site of the proposed development is not served by a right-of-access to a public road. Moreover, no specific legal right exists, to (a) Construct the proposed access road or a riverside retaining wall on/adjacent to existing public open space which is controlled and maintained by Dublin Corporation. (b) Carry out the required visibility improvements at the proposed junction of the new access road and Milltown Road.

In the case of the current planning application, the Planning Officer should have found that an identical position obtains.

## **Social & Affordable Housing**

Condition 7 of the permission requires the developer to "enter into an agreement with the Planning Authority in relation to the provision of social and affordable housing as part of, or in conjunction with, the proposed development". This condition does not require that the social and affordable housing should be provided as part of the development for which permission has been granted, which gives the developer the option of proposing the provision of social and affordable housing in a separate development. In fact, this is what is proposed by the developer in the planning application – see reference to 'Site X' in the Planning Officer's report.

As the Planning Officer has in Condition 7 specifically ruled out 'Site X' as a possible location for the provision of social and affordable housing, he has by corollary left open the possibility of this development occurring on other parts of the public open space

which is to be ceded to Dublin City Council. Given that the provision of the required number of units in a separate block would entail a further significant encroachment on the public open space available, and that this block would have to be the subject of a further planning application, this condition is insufficient to ensure that the developer complies with his/her obligations under Part V of the 2000 Planning and Development Act. Furthermore, it is incompatible with Condition 5 of the permission, which requires the ceding of land to Dublin City Council.