

An Bord Pleanála



Inspector's Report

<u>Appeal Reference No :</u>	PL06F.246474
<u>Development :</u>	Retention of change of use of 3no. office / professional / financial service units (granted under Reg.Ref.No.: F04A/0217) to 3no. 3-bed duplex apartments.
<u>Location :</u>	Block C, Tyrellstown District Centre, Hollywood Road, Mulhuddart, Dublin 15
<u>Planning Application :</u>	
Planning Authority :	Fingal Co. Co.
Planning Authority Reg.Ref.No. :	FW16A/0013
Applicant :	European Property Fund PLC
Planning Authority Decision :	Refusal
<u>Planning Appeal :</u>	
Appellant(s) :	European Property Fund PLC
Type of Appeal :	1st Party
Observers :	None
<u>Date of Site Inspection :</u>	29th June 2016
<u>Inspector :</u>	Leslie Howard

1. SITE LOCATION AND DESCRIPTION :

The application site is located within the curtilage of an existing element of the Tyrellstown Town Centre development. Specifically, the site comprises the first and second floors within Block C, a two and three storey commercial block on the northern and eastern side of the main street within the Town Centre. The three duplex apartment units, proposed for retention, are arranged in a row along the street frontage, and are located above the ground floor occupied in turn by a mix of restaurant / takeaways and a shop. In addition, the ground floor unit to the west is a public house, which appears to have ceased trading, and to the east is a restaurant. On-street car parking is possible along the main street to the front of Block C, with further car parking available to the rear.

2. PROPOSED DEVELOPMENT :

Application lodged for planning permission for retention of the change of use of 3no. office / professional / financial service units (previously approved under **Reg.Ref.No.: F04A/0217**), to 3no. 3-bed duplex apartments of 153.6m², 135.5m² and 178.7m² respectively, all located at 1st and 2nd floor level of Block C, Tyrellstown District Centre, Hollywood Road, Mulhuddart, Dublin 1.

Although granted planning permission as commercial development, it is understood the development was laid out as duplex apartments, and has been operating as residential development since 2006. In this regard, the following comments by the applicant, included in the application and appeal documentation are noted :

- *“... demand for office uses at this location continued to stagnate since 2004, and the office units remained vacant subsequent to this decision, ...”.*
- *“Despite the units remaining on the market they remained vacant for a number of years, hence the need for repeated applications for the change of use”.*
- *“the management company had a high demand for residential accommodation in the area and decided to let out these (subject) units in 2006 ... they have remained in residential use ever since which be close to 10 years”.*

The total stated floor area of the three units is 467.8m². Each unit has a separate access from the ground floor along the commercial parade. The three units comprise what are each a two storey, 3-bedroom duplex apartment unit. The floor areas of each unit are Unit No. 40 – 153.6m, Unit

No. 41 – 135.5m and Unit No. 42 – 178.8m. The internal layout comprises two bedrooms, a kitchen and a living room on the first floor, and one bedroom, a study, and a kitchen on the second floor. The bedrooms face northward over the rear car park area and adjacent greenfield lands, whilst the living areas face onto the Town Centre main street. Each unit is further provided with a generous terraced area to the rear.

3. PLANNING HISTORY :

Reg.Ref.No.F99A/1620 Permission GRANTED for a large mixed use development at Tyrrelstown, Hollywoodrath, Parslickstown and Mulhuddart, Co. Dublin incl. :

- residential development comprising 2119no. dwellings,
- reservation of a 3.54ha site for primary school, neighbourhood shopping and sundry support residential community services
- multiple bulk infrastructure

Reg.Ref.No.F02A/1199 Permission GRANTED for a 17,626m² District Centre, including Block C – a public house (605m²), 3 retail units (total 531m²), a bookmaker (139m²), 2no. 2-bed apartments and 4no. 3-bed apartments, all in a part single, two and three storey building (total 1940m²), and 64no. car parking spaces.

Noteworthy, in the context of the current application, are the following Conditions, attached :

Condition No.14 : The six residential units proposed in Block C to be omitted, and replaced with offices / professional / financial services units.

Condition No. 21 : Notwithstanding exempted development provisions, no change of use shall be permitted, without prior written agreement of the Planning Authority. Specifically –

- retail uses permitted “restricted to Class 1 uses of Part IV,
- office space permitted “restricted to Class 2 &3 of Part IV, of the second

Reg.Ref.No.F04A/0115 Permission GRANTED for alterations to the eastern section of Block D - Tyrrelstown District Centre (**F02A/1199**).

Reg.Ref.No.F04A/0217 Permission GRANTED for alterations to previously approved Block C - Tyrrelstown District Centre (**F02A/1199**), including –

- reduction of building footprint to omit central laneway
- extensions and alterations to layout of 2-storey public house
- ATM machine and service room, to include previous unit 2 – off licence at ground level, with basement
- division and change of use of ground floor unit 3 – bookmaker and unit 4 – retail, to form 3no. units being takeaway units' 2, 3 and 4 respectively
- change of use of office / professional service / financial services units 6 and 7 (1st floor) and 8 and 9 (2nd floor), to form 3no. 3-bed duplex live – work units
- change of use of ground and 1st floor unit 5 – retail, to form a restaurant over 2-floors
- to 2nd floor office / professional service / financial services – unit 6
- to stairways and other ancillary works

Noteworthy, in the context of the current application, are the following Conditions, attached :

Condition No.3 : The proposed duplex residential units to be omitted, and replaced with offices / professional / financial services units, as per Condition No.14 of **F02A/1199**.

Reg.Ref.No.F04A/0917 Permission REFUSED for the change of use of each of office / professional / financial service units' no. 1, 2 and 3, all at 1st and 2nd floor level, to form live-work residential units' no. 1, 2 and 3

respectively, and ancillary to existing units' no. 2, 3 and 4 – takeaway, all at ground floor level, all part of Block C - Tyrrelstown District Centre (**F04A/0217**).

Refusal decision upheld by An Bord Pleanála, on appeal, for two stated refusal reasons, as follows –

Refusal Reason No.1: Serious injury to the residential amenity of future occupants, due to noise and disturbance consequent of proximity to several late night uses, including adjacent takeaways, a public house and restaurant.

Refusal Reason No.2: Material contravention of Condition No.14, attached to the permission granted under F04/0217, due to the introduction of residential uses into Block C

Reg.Ref.No.F04A/1539 Permission GRANTED for change of use and ancillary works to Block B - Tyrrelstown District Centre (**F02A/1199**).

Reg.Ref.No.F04A/1587 Permission GRANTED for change of use and ancillary works to Block D - Tyrrelstown District Centre (**F02A/1199** and **F04A/0115**).

Reg.Ref.No.F05A/0637 Permission GRANTED for change of use and ancillary works to Block A - Tyrrelstown District Centre (**F02A/1199**)..

4. PLANNING AUTHORITY DECISION

(1) **Planning Authority Decision :**

Fingal Co. Co. decided to REFUSE PERMISSION for the proposed development, for 2no. stated 'Refusal Reasons', summarised as follows :

Refusal Reason No.1: Serious injury to the residential amenity of future occupants, due to noise and disturbance consequent of proximity to several late night uses, including adjacent takeaways , a public house and restaurant.

Refusal Reason No.2: A material contravention of Condition No.14, attached to the permission granted under **F04/0217**, due to the introduction of residential uses into Block C

(2) **Planning Reports :**

The Planning Officers report dated 22/03/2016, recommends that permission be REFUSED, generally for the same 2no. 'Refusal Reasons' set out in the Manager's Order below. This recommendation was made having regard to:

Planning Assessment of Key Issues :

(a) **Principle / Zoning Objective :**

Residential development is "permissible in principle", in lands with the LC zoning objective.

(b) **Residential Amenity :**

No potential for overlooking exists. Nor will the proposed development have a negative overbearing impact on adjacent / adjoining properties, in compliance with Objective OS35.

(c) **Previous Area Planner opinion under F02A/1199 :**

- (i) Six apartments at 1st and 2nd level considered as unacceptable.
- (ii) Applicant has failed to address this issue.
- (iii) Whereas late night, potentially nuisance related land uses, considered best located solely within 'commercial' blocks / buildings, residential units are best located above 'passive' shops, offices and services. This arrangement would enable the principle and operation of dual or multi – use, car parking spaces.
- (iv) Late night recreational / social land uses fronting onto a main street performs an important function of generating on-street activity beyond regular office hours.
- (v) Conclude that the proposed Block C residential units be omitted and replaced with offices / professional services
- (vi) Condition No. 14 attached to effect the revision

- (d) **Previous Area Planner opinion under F04A/0217 :**
- (i) proposal to change use of four permitted office / professional services units to three duplex residential units, all at 1st and 2nd floor level at Block C.
 - (ii) Proposed residential units considered incompatible with commercial nature of Block C and the dominance of late night social / recreational uses.
 - (iii) These negative uses would not allow a sufficient level of residential amenity to be enjoyed by future residents.
 - (iv) Block C envisaged as the purely commercial block within the overall 'Town Centre' development.
 - (v) Residential units accordingly excluded by way of Condition No.12 attached to **F02A/1199**.
 - (vi) Now affirm the Planning Authority's opinion as per **F02A/1199**. The duplex residential units considered unacceptable, and to be used as stated at Condition No. 12 of **F02A/1199**

(e) **Further application for change of use of the Block C units to apartments under F02A/1199 :**

Planning Authority decision sustained by the Board, on appeal, for 2no. refusal reasons :

- Serious injury to residential amenity.
- Material contravention of Condition No. 14 attached to permission **F04A/0217**

(f) **Appropriate Assessment :**

Having regard to the location and nature of the proposed development, no adverse impacts to European sites either alone, or in combination with other plans and projects, will result.

(g) **Conclusion :**

Having regard to serious negative residential amenity impact, and to the previous decisions by the Planning Authority and by An Bord Pleanála, recommend refusal of planning permission

(3) **Departmental Technical Reports :**

Transportation Planning Sect. : No objection, subject to Conditions – 15/03/2016

Water Services Sect. : No objection – 23/02/2016

Housing : "...the development of planning application Reg.Ref.F02A/119 accords with Part V of the Planning and Development Acts 2000-2006".

- (4) **Prescribed / Statutory Bodies :**
Irish Water : No objection, subject to Conditions – 22/02/2016
- (5) **3rd Party Objections / Submissions:**
None.

5. 1st PARTY GROUNDS OF APPEAL – European Property Fund plc (c/o Brock McClure –Planning and Development Consultants – 18/04/2016) :

- (1) **Summary :**
- (a) The three 3-bed units are located in an established mixed use area.
 - (b) The site is zoned LC – ‘Local Centre’, within which residential land use is “permitted in principle”.
 - (c) Residents within a District Centre type development should expect a certain level of activity and noise impact, associated with the range of uses normally located within such Centres.
 - (d) The Council’s planning report confirms the units are compliant with residential design requirements, with no negative impacts by way of overlooking or overshadowing.
 - (e) The pub use (when it was in operation) and the restaurant use, are already within 20-30m of existing permitted residential uses, without any significant cause for concern regarding amenity impacts.
 - (f) The principle of residential use over a restaurant is shown to operate successfully in other locations, such as at Rathborne, Ashtown and Dublin 11.
 - (g) The pub use ceased operation in April 2015. This effectively removed the amenity impacts from this late night use. Whilst another pub type land use may return, emphasise that the residential use above, the subject of the current retention application, have been in active use without any significant amenity impacts for approximately 10 years.
 - (h) Refusal reasons referencing historical permissions, should not be used, particularly given that the amenity impacts argued previously, have been addressed in the appeal submission (ie.

residential use above a restaurant is accepted practice, and the pub, whilst it was trading, had limited amenity impacts).

- (i) Having regard to the national housing crisis, and shortages within the Dublin region, whilst modest, the retention of the three duplex apartment units would provide much needed residential housing supply.
 - (j) Accordingly, request the Board overturn the Fingal County Council decision, and grant retention permission for the proposed development.
 - (k) Contextualised against surrounding residential development, the application site :
 - (i) is ideally located to supply residential development that would not have a major impact on the local area, and
 - (ii) would be subject to a comparable low level of amenity impact, associated with surrounding uses, that other residential development within Tyrellstown are currently subject to.
- (2) **Environmental Noise Assessment – iAcoustics (11/04/2016) :**
- (a) Conclude the dominant source of noise impacting upon the application duplex units is related directly to the take-off and landing of airplanes from the adjacent Dublin Airport.
 - (b) Noise levels measured when the food outlets were open and when aircraft movements has ceased, did not vary widely when compared with noise levels measured when the food outlets were closed and aircraft movements were not taking place.
 - (c) The noise from the chiller and air extraction units associated with the various food outlets are not a source of noise nuisance to the duplex residential units located directly above.
 - (d) The public bar is currently closed, vacant and not operational. Whilst noise impact assessment not possible, recommend that the sound insulation of the partition wall be upgraded by way of additional wall lining to the public house side of the party wall.
 - (e) Noise levels generated from the restaurant, under normal circumstances, are expected to be relatively low. Typical noise levels are no more than in a typical residential dwelling and are not considered loud.

6. RESPONSES / OBSERVATIONS TO THE 1st PARTY GROUNDS OF APPEAL :

(1) Planning Authority Response (see 12/05/2016) :

- (a) Clarify the number and type of existing late night ground floor uses including – a bar, takeaway and restaurant. These uses are considered to have a serious negative impact on the residential amenities of the residents occupying the apartments, for which retention permission applied for.
- (b) Emphasise negative residential amenity impact consequent of noise and disturbance generated by patrons of the late night ground floor uses, as well as from the operation of extractor and food preparation equipment associated with these uses.
- (c) The planning recommendation and Planning Authority decision under **FW16A/0013**, is consistent with previous decisions regarding this site under **F02A/1199**, **F04A/0217** and **F04A/0917**.
- (d) Reference the Area Planners conclusion under **FW16A/0013**, that firstly, having regard to the serious negative residential amenity impacts consequent of proximity to uses generating late night noise and disturbance, and secondly, the previous planning decisions on this site made by both the Planning Authority and An Bord Pleanála, “a recommendation to refuse planning permission shall be made”.
- (e) The proposed development is not deemed to be in accordance with the proper planning and sustainable development of the area.
- (f) Request that the Board uphold the Planning Authority’s decision to refuse planning permission.

7. POLICY CONTEXT :

Fingal Co. Development Plan (2011-2017) :

Relevant provisions incl. –

Ch.1 Strategic Overview :

1.5 Core Strategy :

Settlement Hierarchy - Metropolitan Consolidation Towns :

The emphasis ... is to consolidate the existing zoned lands and to maximise the efficient use of the existing and proposed

infrastructure. In this way the Council can ensure an integrated land use and transport strategy.

Ch.7 Urban Fingal :

Aim Create and conserve high quality, vibrant and sustainable urban areas.

7.1 Background – What makes a high quality Urban Area ?

High quality urban areas are places where people want to live, work & visit. A successful urban area is made up of many components & will generally incl. the following characteristics :

- a sense of place.
- a safe, healthy local environment.
- a range of high quality easily accessible retail facilities.
- easy access to well-resourced schools & health services.
- well-designed open space providing a range of leisure activities.
- a strong, vibrant local economy that supports employment.
- good access to community facilities.
- a high standard of housing & residential layout.
- high quality accessible Public Transport.
- good accessibility & a high level of permeability.
- high quality 'Green Infrastructure' provision.

7.2 Urban Design :

Urban Design Criteria for Urban Dev. :

The 12no. 'urban design principles' incl. :

- | | |
|----------------|---------------------|
| • Context | • Connections |
| • Inclusivity | • Variety |
| • Efficiency | • Distinctiveness |
| • Layout | • Public Realm |
| • Adaptability | • Privacy / Amenity |
| • Parking | • Detailed Design |

Mixed Uses & Vitality of the Urban Areas :

- "To ensure that development takes place in a sustainable & efficient manner, mixed use developments are essential";
- "Such mixed uses should complement each other ...";

- Objective UD03** Locate different types of compatible land uses eg. residential, employment, local retail & daily service needs close together, so as to encourage a greater emphasis on the use of sustainable transport modes.
- Objective UD04** Encourage a mix of uses in urban centres where appropriate.
- Objective UD05** Assess planning applications for change of uses in all urban centres on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, parking & local residential amenity.
- Objective UD07** Ensure all applications for new or extensions of existing uses ... protect Residential & Visual Amenity.
- Objective UD08** Assess planning applications in areas zoned 'Local Centre' in respect of the cumulative impact of non-retail uses at ground floor level in order to protect the retail viability of shopping areas, & to maintain the visual character of the 'Centres'.

7.4 Residential Development :

- Objective RD01** Ensure consolidated development in Fingal by facilitating residential development in existing urban areas.
- Objective RD07** Require that new residential units comply with or exceed the minimum standards as set out in Tables RD01, RD02 & RD03.

Ch. 9 Land Use Zoning:

Zoning Objective "LC" Local Centre

Objective: "... to Protect, Provide for and / or Improve Local Centre Facilities".

Vision: "Provide a mix of local community & commercial facilities for the existing & developing communities of the County. The aim is to ensure 'Local Centres' contain a range of community, recreational & retail facilities, incl. medical / dental surgeries & childcare facilities, at a scale to cater for both existing residential development & zoned

undeveloped lands, as appropriate, at locations which minimise the need for use of the private car & encourage pedestrians, cyclists & the use of public transport. The development will strengthen local retail provision in accordance with the Co. Retail Strategy”.

Use Classes related to Zoning Objective

“Permitted in Principle” uses include: ‘Fast Food Outlet / Take-Away’; ‘Office Ancillary to Permitted Use’; ‘Public House’; ‘**Residential**’; ‘Restaurant / Café’; ‘Retail – Local < 150m² nfa’; ‘Retail – Convenience < 500m² nfa’; ‘Retail – Supermarket < 2,500m² nfa’

(see Map – Fingal Co. Dev. Plan 2011 Land Use Zoning Objectives).

Blanchardstown North Local Objectives (Sheet 12) :

Objective 404 Facilitate and provide community, family, and youth facilities within the Tyrrelstown Town Centre Complex

8. ASSESSMENT :

(1) I have examined the file and available planning history, considered the prevailing local and national policies, physically inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application.

I believe that the relevant planning issues relate to :

- (a) Principle and location of the proposed ‘retention’ development.
- (b) Planning history of the 3no. duplex apartments.
- (c) Diversification of land use within Block C – Objective UD05.
- (d) Visual Impact / Streetscape.
- (e) Refusal Reason No.1 – Residential Amenity Impact.
- (f) Refusal Reason No.2 –
- (g) Appropriate Assessment.

(2) **Principle and location of the proposed ‘retention’ development :**

I believe the planning principle of residential land use, in this instance by way of the retention of three duplex apartments, at 1st and 2nd floor levels within Block C, Tyrrelstown Town Centre, has been established. Clearly zoned “LC – Local Centre”, the applicable zoning matrix designates ‘residential’ land use as being “permitted in principle” within

the LC zone. I do not believe that any of the Planning Authority or first party interests contest this principle.

However, in terms of the LC zoning objective, and supplemented by the 'LC' – Vision, the primary consideration is to ensure Local Centres contain a range of community, recreational & retail facilities, at a scale to cater for both existing and new residential development, as appropriate, and at locations minimising the need for private car usage, encouraging pedestrian and cycle movements, and maximising usage of public transport. The proposed retention of residential development at Block C, Tyrrelstown Town Centre, will strengthen and consolidate integrated mixed urban land use within the Tyrrelstown Town Centre, whilst enhancing local vitality, in accordance with the Fingal County Development Plan 2011 provisions.

In the context of the proposed retention of the three duplex apartments, further qualification is enabled by the application of the suite of relevant County Development Plan 2011 provisions outlining the key elements and design criteria for a high quality, sustainable urban area (Section 7.1 and 7.2), together with the Development Objectives, including Objectives UD03-UD05, UD07 and UD08 regarding "Mixed Uses and Vitality of the Urban Areas" (Section 7.2) and Objectives RD01 and RD07 regarding "Residential Development" (Section 7.4). It is in this regard that the proposed retention of the three duplex apartments requires consideration.

Further, no provision within the Fingal County Development Plan 2011 is clearly apparent, either prohibiting or substantively qualifying the provision of residential units of any form, above commercial / retail units at any location. I concur with the applicant's expressed view in this regard.

Having regard to the discussions below, I believe that the proposed retention of the three duplex apartments is sufficiently compliant with these Fingal Co. Dev. Plan 2011 policies and objectives, and as proposed, would be in accordance with the proper planning and sustainable development of the Tyrrelstown Town Centre.

(3) **Planning history of the 3no. duplex apartments :**

Having had detailed regard to the extensive planning history of the Tyrrelstown Town Centre generally, and Block C specifically, I note that the space within Block C occupied by the 3no. duplex apartment units, though permitted as offices / professional / financial services units originally consequent of Condition No.14 under **F02A/1199**, and sustained in terms of Condition No.3 of the revised scheme for Block C permitted under **F04A/0217**, have never been used as such.

Rather, I note the applicant's declaration that the 3no. units were fitted out for residential use in early 2005, and have been successfully let out since that time. The applicant clarifies that this was consequent of the demand for office units at this location, stagnating after 2004. In fact, the permitted office units are confirmed as remaining vacant throughout the time post **F04A/0217**, and up to the point from which they have been used and occupied as residential units. Certainly, at the time of my own site visit, the 3no. duplex apartments were not only existing, but had the appearance of well-established and occupied residential units.

Having regard to all of the information available, no evidence is apparent confirming enforcement proceedings being taken by the Planning Authority, since 2005, against the applicant regarding the unauthorised use of these 3no. units. The Planning Authority appear silent in this regard, in all of their submissions. Rather, the Planning Authority comment in the planning report (see 22/03/2016) confirming that "the subject development was laid out as apartments and has been operating as residential development since 2006".

I accordingly regard as reasonable, the applicant's stated motivation that they are now seeking to formally regularise the situation at Block C, as more than 10-years of sustained residential land use of the 3no. units, have passed.

I note that the applicant's stated confirmation that there is no record of Fingal County Council ever taking enforcement action against them, regarding their use of the units as residential, is not disputed at all by the Planning Authority in any of their documentation and submissions' regarding the current application for retention permission. I believe this clarification is to the advantage of the applicant, in consideration of the proposed retention of the 3no. duplex apartments at Block C.

- (4) **Diversification of land use within Block C – Objective UD05 :**
Development Plan Objective UD05 requires assessment of planning applications “for change of uses in all urban centres on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, parking & local residential amenity”.

Whilst the de facto and unauthorised use of the application Block C units since 2005, has been residential, the formal change of use from that statutorily permitted under **F02A/1199** and **F04A/0217** is to be enabled under the current application **FW16AS/0013**.

Certainly, whereas each of the permissions granted by the Planning Authority under **F02A/1199**, and **F04A/0217**, predated the adoption of the current County Development Plan 2011, thereby enabling the historical context within which it appears the strategic approach taken by the Planning Authority to consciously exclude residential land use from Block C, was grounded, compliance with Objective UD05 is now required.

Having regard to discussion elsewhere in this assessment, and to my own informal analysis of existing land use within Tyrrelstown Town Centre generally, and Block C specifically, at the time of site visit, I am satisfied that the proposed change of permitted use by way of regularisation of the existing 3no. duplex apartment units, would indeed positively contribute to a diversification of land use locally, as well as to the vitality of the Town Centre, in compliance with Dev. Plan Objective UD05 and the LC Zoning Objective. I share the conviction argued by the applicant in this regard.

In this regard, I am satisfied the proposed retention of the 3no. duplex apartment units at Block C, would be in accordance with the proper planning and sustainable development of the area.

- (5) **Visual Impact / Streetscape :**
The sense of place of the Tyrrelstown Town Centre generally and at Block C specifically, is clearly influenced by the architectural style, design, and general finishing with respect to materials and colouring of the existing generally 3-storey Blocks fronting onto the main street running west to east through the town centre. Maintenance of this sense of place is emphasised at Sections 7.1 and 7.2 of the Fingal

County Development Plan 2011. All parties to the current case, in my view, aspire to preserve this amenity.

In my view, no disproportionate, negative impact on the existing visual amenity associated with the Tyrrelstown Town Centre streetscape will result, consequent of the proposed retention of the three duplex apartment units at Block C. In fact, having regard to their albeit unauthorised existence at Block C since 2005, no change or impact will result at all. Rather than being a negative visual externality, the proposed retention would enable positive contribution to the consolidation of the streetscape at Block C consistent with other Blocks characterising the pattern of development within the town centre. Their usage as residential units would certainly be an improvement from the understood sustained vacancy of the office / professional / financial services units permitted under **F02A/1199** and **F04A/0217**.

Accordingly in this regard, I believe that the proposed retention of the three duplex apartment units at Block C, would be in accordance with the proper planning and sustainable development of the area.

(6) **Refusal Reason No. 1 – Residential Amenity Impact :**

In as much as I understand amenity values as referring to those natural or physical qualities and characteristics of the Tyrrelstown Town Centre generally, and Block C specifically, that contribute to residents appreciation of its pleasantness, mixed use vitality, liveability, aesthetic and functional coherence, and easy accessibility, I am of the view that the proposed retention of the three duplex apartment units will have no serious, or disproportionate negative impact on either of this prevailing residential amenity, or on that reasonably expected by the residents occupying the three units specifically.

In my view, a reasonable indicator of the sustainability of residential usage of the three units, is that they have been successfully occupied and used, albeit without planning permission, as duplex apartments since 2005. Each unit enjoys a separate access from ground floor along the commercial parade. Ranging from c.153.6m² to c.178.8m², the 3-bed units are generously sized, exceeding County Development Plan 2011 Standards. Noteworthy, is that the bedrooms are on the northern side of the apartments, away from the commercial / leisure land uses below, along the town centre main street. Each unit is also provided with a generous terraced area to the rear, also away from the

main street frontage. Further, no negative impacts by way of overlooking or overshadowing are apparent. In themselves, I share the applicant's conviction that each of the three duplex apartment units proposed for retention are of high quality, are generously proportioned, and whilst certainly modest in number, make a positive contribution to the availability of housing stock locally.

However, the proximity of these units directly above several street level late night uses, including takeaways, a public house and restaurant, has been the primary concern of the Planning Authority in its assessment of previous applications. Throughout its considerations, the Planning Authority have advocated the view that serious, disproportionate injury to the residential amenity of occupants' of the duplex apartments within Block C, will result due to noise and disturbance generated by the late night uses below.

Whilst some impact on residential amenity must reasonably be expected due to the proximity, I disagree with the Planning Authority that this impact is so serious as to deserve a refusal planning permission, primarily on these grounds alone. I express this view having regard to the following :

- no provision within the Fingal County Development Plan 2011 is clearly apparent, either prohibiting or substantively qualifying the provision of residential units of any form, above commercial / retail units at any location. I concur with the applicant's view in this regard.
- the 1st and 2nd floor levels within Block C enable opportunity for residential development, precisely because of good accessibility to the range and mix of complementary urban facilities, services and amenities normally found within town centres, and inclusive of late night uses. Such diversification of use and consolidation of function of the Tyrrelstown Town Centre, would be in accordance with Objectives UD05 and RD01 of the Development Plan 2011.
- reliance on the private motor vehicle movements will be significantly reduced, with corresponding improved pedestrian movement and increased public transport usage, reasonably expected.

- contrary to the Planning Authority's sustained concerns, town centres are defined by their diversity of uses, inclusive of residential use, and local residents more often than not, must reasonably expect a certain level of activity with associated amenity impact, when living in town centres. The Tyrrelstown Town Centre is no exception in this regard.
- however, whereas the Planning Authority conviction in this regard, appears to be of such a direct, disproportionate and fundamental impact, so as to warrant a refusal of planning permission, I rather believe in a more balanced, pragmatic approach.

Firstly, the enhanced diversification consequent of residential land use, would result in an improved 24 hour residential presence within the town centre at Block C, with the added benefit of continual passive surveillance of the area. This would enhance a sense of security locally, as well as consolidate an overall sense of community within the town centre.

Secondly, I believe the three duplex apartment units by way of house type and location, contribute to a mix of residential accommodation available locally.

This improved choice of housing and associated lifestyle characteristic of town centre living, is not suited to everybody. However, the retention of these duplex apartment units would enable and sustain choice.

I affirm the view that the existing sustained residential occupancy of these units since 2005, substantiates the merit and viability of residential land use as a key element of Block C within the Tyrrelstown Town Centre.

- Access to reasonably sized, laid out and located living space, is a reasonable expectation enabling domestic unity of everyday life experiences. Consistent with modern living, this is often motivated having regard to stage in the life-cycle liveability needs of people, both as individuals and as family units. Whilst not suitable to some, the availability of the centrally located duplex apartments may be entirely suitable for others, and in some cases even, precisely due to proximity and accessibility to the street level late night uses considered by the Planning Authority as serious negative externalities. These choices in my view are characterised by an element of trade-off. For example, improved accessibility by residents to centrally located facilities, services and amenities, comes with an expectation of exposure

to reasonable activity and noise associated with town centres. In this regard, I share the applicant's view that immediate proximity to late night uses is not an automatic indicator of residential amenity loss.

Curiously, in the context of Refusal Reason No. 2, I note that the applicants "Environmental Noise Assessment" report completed by iAcoustics (11/04/2016), concludes that the dominant source of noise directly impacting upon the amenity of the application duplex apartment units is not related to the late night uses below, but rather directly to the take-off and landing of airplanes from the adjacent Dublin Airport. In fact, the report concludes that no serious negative impacts on the residential amenity of the duplex apartments residential amenity exists, consequent of noise levels generated by the late night uses below, including the takeaways, restaurant and public house, which itself was noted as having ceased operations at that location for the past year.

Notwithstanding the above, I am inclined to consideration of reasonable mitigation of noise impacts and associated nuisance. Towards this end, I have included a generally standard condition in the recommendation below, should the Board be mindful to grant retention permission, and which would involve minor refitting of the apartment units.

- that such an emphatic, direct correlation and conclusion by the Planning Authority, would threaten loss of centrally located and accessible lands to residential development within town centres. I do not believe that this is what is intended at Chapter 7 – "Urban Fingal", within the County Development Plan 2011.

Having regard to the above, I conclude that Refusal Reason No. 1 cannot be sustained. Rather, I believe that retention of the three duplex apartment units at Block C, would be in accordance with the proper planning and sustainable development of the Tyrrelstown Town Centre. I recommend to the Board accordingly.

(7) **Refusal Reason No. 2 :**

In the first instance, as discussed at 8(2)-(6) above, I advocate strongly in favour of the retention of the three duplex apartments at Block C, on the planning merits alone, having had regard to the relevant statutory planning policy provisions and my de-novo consideration of the planning merits of the case. I share the applicant's conviction that no serious, disproportionate injury to the residential amenity of occupants'

of the duplex apartments will result due to noise and disturbance generated by the late night uses below. Whilst some impact on residential amenity must reasonably be expected, I disagree that this impact is so serious as to deserve a refusal planning permission, primarily on these grounds alone.

Secondly, well over 10 years has passed since the Planning Authority initially decided to exclude a residential land use element from Block C, by way of Condition No. 14 attached to the permission granted under **F02A/1199**. This exclusion was sustained by way of Condition No. 3 attached to the permission granted under **F04A/0217**, and the refusal decisions subsequently made by the Planning Authority and An Bord Pleanála respectively, under **F04A/0917** and **PL06F.208806**. During this time the Fingal County Development Plan 2011-2017 was adopted, and the completion of the new 2017-2023 County Development Plan is currently understood to be progressing.

More importantly, in my view, over this time period a pattern of mixed land use has consolidated itself within the Tyrrelstown Town Centre, inclusive of a residential presence. Within Block C, this sustained albeit unauthorised residential use, has comprised the three duplex apartment units at 1st and 2nd floor levels, for which regulatory retention permission is now sought.

In my view, notwithstanding all of the exclusionary Conditions attached to previous permissions, and to previous refusal decisions, these do not preclude the applicant from lodging a new application for permission at Block C. Currently, this new application is for the retention of the three duplex apartment units at Block C.

I do note the Planning Authority's wording of Refusal Reason No. 2, emphasising that the current application for retention of residential development at Block C, is a "material contravention" of Condition No. 14 attached to the permission granted under **F04A/0217**. I distinguish that this opinion by the Planning Authority is with respect to a restrictive or exclusionary Condition attached to a previous decision to grant planning permission, as opposed to being considered a "material contravention" of a provision of the County Development Plan 2011. I therefore understand that the Boards de-novo consideration of the current application for retention permission is not encumbered by the

provisions of Section 37(2)(b) of the Planning and Development Act, 2000.

Further, I believe reasonable consideration of the current application for retention of residential development, is appropriate having regard to the current national housing crisis and the supply of residential units to market. Whilst a modest development of only three duplex apartment units, I believe a positive contribution would be made to the supply of housing / residential units within the Tyrrelstown Town Centre, were the Board to grant retention permission in the current instance.

Having regard to the above, I conclude that Refusal Reason No. 2, cannot be sustained. I recommend to the Board accordingly.

(8) **Appropriate Assessment :**

Having regard to the nature and scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9. RECOMMENDATION :

Having regard to all of the above, I recommend that permission be GRANTED in accordance with the following Schedules.

REASONS AND CONSIDERATIONS

Having regard to the Zoning Objective "LC" for the area and the pattern of urban development in the area, it is considered that, subject to compliance with Conditions set out in the Second Schedule, the proposed development would be in accordance with the relevant provisions of the Fingal Co. Dev. Plan 2011-2017; would not seriously injure the amenities of the Tyrrelstown Local Centre, or of the property in the vicinity; would not be prejudicial to public health; and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

- (1) The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason : In the interest of clarity.

- (2) The internal noise levels, when measured at the windows of the proposed development, shall not exceed :

(a) 35 dB(A) LAeq during the period 0700 to 2300 hours, and

(b) 30 dB(A) LAeq at any other time.

A scheme of noise mitigation measures, in order to achieve these levels, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed measures shall be implemented before the proposed dwellings are made available for occupation.

Reason : In the interest of residential amenity.

- (3) All the external finishes shall harmonise in materials, colour and texture with the existing finishes characteristic of Tyrellstown Town Centre generally, and Block C specifically. Details including samples of the materials, colours and textures of all the external finishes to the building, shall be submitted to, and agreed in writing with the Planning Authority prior to commencement of development.

Reason: In the interest of visual amenity.

- (4) 6no. car parking spaces shall be provided to serve the apartment units. The location and layout of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason : To ensure adequate off-street parking provision is available to serve the proposed development.

- (5) Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason : In the interest of public health.

- (6) A plan containing details for the management of domestic waste and, in particular, recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

Reason : In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

- (7) The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason : To ensure the satisfactory completion and maintenance of this development.

- (8) The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason : It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Leslie Howard
Planning Inspector
04/08/2016