



An
Bord
Pleanála

Inspector's Report ABP-300546-18

Development

Construction of a 3-storey apartment building over single storey basement car park with 9 no. apartments consisting of 1 no. 1 bedroom duplex, 2 no. 2 bedroom duplex, 5 no. 1 bedroom and 1 no. 2 bedroom units, private terraces at ground floor level, private balconies at first and second floor level and communal roof terrace at second floor level. Basement to accommodate 9 no. car parking spaces and a refuse storage/recycling area. Bicycle parking and refuse composting area at ground level on a site of 0.1 Ha together with all associated landscaping, site services and external works.

Location

Rear 44, Parnell Road, Dublin 12

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3974/17

Applicant(s)

Tinnelly Construction Ltd.

Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Susan Reilly 35 th Dublin, Donore Ave Scout Group Larry Corr
Observer(s)	Margaret Galvin & Eoghan O'Scanail
Date of Site Inspection	11/05/18
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site is located to the rear of no.s 44,45, and 46 Parnell Road, in the south Dublin suburb of Crumlin. This section of Parnell Road runs to the south of the Grand Canal, between Donor Avenue and Clanbrassil Street Upper.
- 1.2. The subject site is accessed via a lane running between no.s 44 and 45, opening out into an irregular shape. To the south of the site are the grounds of Our Lady's Hospice Harolds Cross. The eastern boundary of the site adjoins the Donore Avenue Scout Hall and the rear of no. 44 Parnell Road. Further east are two storey dwellings on Arbutus Avenue. A gated laneway off Arbutus Avenue provides access to the Scout Hall and the rear gardens of no.s 37-43 Parnell Road. The western boundary of the site is the rear boundary walls of no.s 45 and 46 Parnell Road.
- 1.3. Currently on site is the unfinished basement of a former development, granted permission in 2007 but never completed. On the date of the site visit, an unknown depth of water filled the open basement. This section of the site was fenced off.

2.0 Proposed Development

- 2.1. On the 3rd October 2017, permission was sought for the construction of a three storey apartment block of 1,075sq.m., over single storey basement car park (9 no. spaces) with nine apartments – 1 no. one bed duplex, 2 no. two bedroom duplexes, 5 no. one bedroom apartments and 1 no. two bedroom apartment.
- 2.2. Details provided on the application form are:
 - Total site area: 1000sq.m.
 - Floor area of proposed development: 1075sq.m.
 - Proposed plot ratio: 0.69
 - Proposed site coverage: 27%
- 2.3. The application was accompanied by the following:
 - Engineering, Assessment, Foul Water Drainage, Storm Water Drainage Report
 - Design Standards Compliance Statement

- Flood Risk Assessment

3.0 Planning Authority Decision

3.1. Decision

3.1.1. ON the 27th November 2017, the Planning Authority issued a notification of intention to GRANT permission, subject to 11 no. conditions. Conditions of note are:

3 – mansard roof design to be omitted. Revised roof design to be submitted.

4 – revised external finishes required to respect the local character and setting.

3.2. Planning Authority Reports

3.2.1. **Drainage** Division: No objection subject to conditions.

3.2.2. **Roads and Traffic** Planning Division: No objection subject to conditions.

3.2.3. **Planning** Report: Proposed residential use complies with the zoning objective. Proposed units comply with development plan standards and Design Standards for New Apartments. Design approach of proposed block is not appropriate, would not contribute positively to the character and setting of the area and would have an overbearing impact on adjoining properties. Recommendation to grant subject to modifying conditions.

3.3. Third Party Observations

3.3.1. A number of objections to the proposed development were submitted to the Planning Authority. The issues are all raised in the three third party appeals and one observation.

4.0 Planning History

4.1.1. Planning Authority reg. ref. **4992/04**: Planning permission was granted for the demolition of an extension to the side of no. 44 Parnell Road, the construction of a two storey block with 6 no. apartments and 6 no. car parking spaces.

4.1.2. Planning Authority reg. ref. **6691/06**: Planning permission was refused for the construction of a three storey over basement block of 10 no. apartments and 10 no. car parking spaces.

4.1.3. Planning Authority reg. ref. **2894/07**: Planning permission was granted for the construction of a three storey block of 9 no. apartments.

5.0 Policy Context

5.1. Sustainable Urban Housing Design Standards

5.1.1. These 2007 guidelines provide recommended guidance for internal design standards, storage areas and communal facilities, private open spaces and balconies, overall design issues and recommended minimum floor areas and standards. In December 2015 new Guidelines were published, updating the previous guidelines.

5.1.2. Private Amenity Space Minimum depth of 1.5m 1 bed: 5sq.m. 2 bed: 7sq.m. 3 bed: 9sq.m. Studio: 4sq.m.

5.2. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities

5.2.1. The March 2018 Guidelines update and amend the 2015 guidance, adding in new sections in order to

- Enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas;
- Make better provision for building refurbishment and small-scale urban infill schemes;
- Address the emerging 'build to rent' and 'shared accommodation' sectors; and
- Remove requirements for car-parking in certain circumstances where there are better mobility solutions and to reduce costs.

5.2.2. Of relevance to the subject proposal are the following:

Specific Planning Policy Requirement 2: For all building refurbishment schemes on sites of any size, or urban infill schemes on sites of up to 0.25ha:

Where up to 9 residential units are proposed, notwithstanding SPPR 1, there shall be no restriction on dwelling mix, provided no more than 50% of the development (i.e. up to 4 units) comprises studio-type units;

Where between 10 to 49 residential units are proposed, the flexible dwelling mix provision for the first 9 units may be carried forward and the parameters set out in SPPR 1, shall apply from the 10th residential unit to the 49th;

For schemes of 50 or more units, SPPR 1 shall apply to the entire development.

Specific Planning Policy Requirement 3: Minimum Apartment Floor Areas:

Studio apartment (1 person) 37 sq.m

1-bedroom apartment (2 persons) 45 sq.m

2-bedroom apartment (4 persons) 73 sq.m

3-bedroom apartment (5 persons) 90 sq.m

Specific Planning Policy Requirement 5 Ground level apartment floor to ceiling heights shall be a minimum of 2.7m and shall be increased in certain circumstances, particularly where necessary to facilitate a future change of use to a commercial use. For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, planning authorities may exercise discretion on a case-by-case basis, subject to overall design quality.

- 5.2.3. **Section 3.39** refers to private amenity space standards for apartments, stating that for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, private amenity space requirements may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality.

5.3. **Dublin City Development Plan 2016-2022**

- 5.3.1. The subject site is located in an area zoned Z1 with an objective 'to protect provide for and improve residential amenities'. Residential use is permitted in principle in such zones.
- 5.3.2. **Chapter 17** provides for policies, objectives and standards for residential development; infill in Section 17.9.7 and minimum standards for internal accommodation and private open space provision in 17.9.1.
- 5.3.3. **Policy QH8** aims to promote the development of under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.
- 5.3.4. **Chapter 16** includes the Development Management Standards and has regard to Design, Layout, Mix of Uses and Sustainable Design. **Table 16.1** provides the Maximum Car Parking Standards for Various Land-Uses and **Table 16.2** the Cycle Parking Standards.

6.0 The Appeal

6.1.1. Three third party appeals against the decision of the Planning Authority to grant permission were submitted to the Board.

6.2. Grounds of Appeal – Larry Corr

6.2.1. The appeal is submitted on behalf of Larry Corr, his partner Bridget and his daughter Caoimhe, all of 8 Arbutus Avenue, Dublin 12. The grounds of the appeal can be summarised as follows:

- The urgent need for housing is acknowledged.
- The proposed development does not comply with the zoning objective, chapter 5 Quality Housing, chapter 12 Sustainable Communities and Chapter 16 Standards for residential communities.
- The appellant does not object to development on the subject site but seeks to protect the existing rights and assets of the area and the need for proportionality. It is submitted that a reduction of the number of apartments, reduction in height and a relocation of the block on the site would allow the development to be commercially viable and protect the residential amenity of the area.
- The proposed development would cause difficulties with flooding, parking and road safety.
- It is submitted that the subject site is too constrained to accommodate a three storey development of nine units.
- The backland nature of the proposed building, behind 23 no. houses does not respect the existing neighbourhood.
- The residential amenities of 22 no. homes and the 120 no. users of the Scout Hall would not be protected or improved, contravening the zoning objective.
- It is submitted that the proposed development is not compatible with the existing area due to the site size and shape, the narrow site entrance and the proximity to the Scout Hall and no.s 2, 6, 8,10 Arbutus Avenue.
- It is submitted that the application and the appeal are invalid due to obsolete development plans quoted, omission of current document references, misleading maps and drawings of existing buildings, having a meeting with the Planning

Authority, indicating that the Scouts group support the application when in fact they are appealing the decision and incorrectly represented the Scout Hall on drawings.

- Errors on drawings: no structure in the rear of no. 8 Arbutus, the separation distance between the proposed development and the rear of no.s 8 and 10 is 19m not 22.76 as shown on the proposed site layout. It is submitted that this major error has implications for assessing daylight, privacy, visual amenity and noise environment.
- The applicants reference to the development plan is erroneous – reference made to the 2011 development plan and incorrect quotes made. It is submitted that the regulatory compliance claimed by the applicant is false and that the public is misled.
- On the application form, the applicant indicated that email contact with the area planner took place. It is submitted that this was not a formal meeting and should not have been recorded. It is submitted that the applicant is statutorily required to have a pre-planning meeting with the Planning Authority, as per section 5 of the Planning and Development Housing and Residential Tenancies Act 2016.
- The applicant has misled all parties by stating that the Scout Hall are in favour of the proposed development when in fact they are opposed to it.
- Three windows on the Scout Hall roof are not shown on the plans. The proposed apartment block of 9m, at 6m distance from the 5m¹ high Scout Hall would interfere with the light entering these windows. The Scout Group has 120 no. members.
- The only access to the Scout Hall is from Arbutus Avenue. This route also provides access to the rear of no.s 37-43 Parnell Road and 2-16 Arbutus Avenue.
- It is submitted that the proposed development will devalue the Scout Hall. 10 no. of the 12 no. windows on the west elevation of the Scout Hall will be blocked and the Hall's right to light will be impacted.

¹ The Board will note that the Appellant refers to the Scout Hall being 15.17m tall. This is presumed to be a typographical error as the Hall is clearly shown as 5.17m.

- With regard to the Planning Authority's condition no. 3, the Board is requested to reduce the height of the proposed block as third parties will not be able to comment on any revised roof profile.

6.3. Grounds of Appeal - 35th Donore Avenue Scouts

6.3.1. The grounds of the appeal can be summarised as follows:

- The proposed development if permitted will result in a significant and adverse impact on the long-established Scout facility. The Scout group has been in existence since 1960, with 120 no. people and 30 no. adult volunteers.
- The Planning Authority was made aware that the 2-storey façade of the den forms the eastern boundary of the site. The Planning Authority stated that a high block wall adjoined the Scout Hall. For the avoidance of doubt, the high block wall is the Scout Hall.
- It is submitted that the design response to the constrained site is inadequate.
- The Applicants claim to the Planning Authority that the Scout Group support the development is refuted. The appellant notes that this was given no further consideration by the Planning Authority. The report of the Planning Authority focuses on how the development meets the general site rather than the wider area.
- That the development was not assessed as an infill development is a significant deficiency. The impact of the proposed development on the wider area was not assessed.
- The three storey development will significantly and adversely impact upon the Scout den, detrimentally affecting its value, functionality and development potential by reason of overlooking, overbearance and over shadowing.
- The proposed development will have an adverse impact on the residential amenities of Arbutus Avenue.
- The Z1 zoning objective is not focused on new residential development but explicitly on the protection and improvement of existing or established residential amenities such as Arbutus Avenue.

- The Board will note that the Planning Authority stated that the proposed development is not keeping with the pattern of development on Parnell Road and Arbutus Avenue. It is submitted that there was no consideration of the scale and extent of the proposed development.
- It is submitted that residential is not the zoning objective for the area, but “the protection, provision and improvement of residential amenities”. Residential is merely a permissible use.
- It is submitted that the Planning Authority did not consider policies QH7 and QH8 of the development plan. The proposed development has no respect for the design and character of the wider area, it does not integrate and it impinges on the Scout den on the eastern boundary. It is not in accordance with policies QH7 and QH8.
- Section 16.2.2.2. of the development plan in relation to infill development, was not considered by the Planning Authority. The subject area is not an area of varied cityscape but a homogenous low-density city area characterised by two storey form and scale. The proposed development cannot be considered to respect and complement this pattern of development.
- It is submitted that the Planning Authority failed to consider the specific standards for infill development and has failed to protect the amenities of properties in the vicinity of the subject site.
- The Scout den is 5.17m high with a band of small windows on the western wall adjoining the subject site. In addition to the three roof windows, this is the sole source of natural light. The proposed three storey development is 6m from the den. The communal terrace comprises the primary area of semi-private open space. The proposed 9m high building will have a significant and adverse impact on the scout den by reason of overbearance, overlooking, removal of natural light and overlooking of an area where children undertake activities.
- The future development potential of the Scout hall will be adversely affected. The addition of a new storey or the vacating of the site for sale will be compromised by the existence of the proposed block.

- The most recent planning permission is over a decade old and assessed under a previous development plan. The 2005 development plan made little provision for infill development and the protection of surrounding land uses and amenities. The planning policy context has altered significantly with the result that protection of surrounding amenity takes greater priority. The planning history of the site has little relevance. The Planning Authority acknowledged that the previous permission would not be in accordance with the current development plan. The decision of the Planning Authority to grant permission is not understood.
- The considerations of the Planning Authority regarding internal design do not over-ride the policies of the development plan in relation to in-fill development.
- The Board is requested to refuse permission.

6.4. Grounds of Appeal – Susan Reilly

6.4.1. The grounds of the appeal can be summarised as follows:

Flooding

- The site has deep pools of water. The area is prone to flooding which damages property and causes loss of life. The environmental impact of the proposal should have been discussed with neighbours. An independent flooding assessment is required.
- Parnell Road and Harold's Cross Bridge regularly flood. In Blackpitts ground floor apartments and car parks flooded. This was linked to an underground blockage from the River Poddle. The location of underground waterways is unclear.
- Insurance for any future flooding is questioned.
- The flooding conditions added by DCC are questioned given that the flooding occurrences are not isolated incidents.
- The appellant questions who is liable should damage occur from flooding, given that the applicant is a limited liability company.

Drawings

- The structures on Arbutus Avenue have not been correctly represented on the application drawings.
- Details of the rear of the Scouts Hall are not shown.
- The Council had out of date plans on which to assess the proposal. n

Right to Light

- The proposed development will block the light to some of the houses on Arbutus Avenue and the scout's hall.
- The 2010 case HKRUK II (CHC) Ltd. V Heaney restored light to a neighbour, requiring demolition of some of the development. The possible obstruction of light to Arbutus Ave and the Scout Hall is not clear due to drawing inaccuracies.
- Section 40(1) of the Land and Conveyancing Law Reform Act 2009 verifies an implied grant to a right to light. Other legislation allows an application to the court confirming the right to light where it has been enjoyed for fixed periods without consent.
- Case law Colls v Home and Colonial Stores Ltd., Allen v Greenwood and Higgins v Betts refer to the right to light and blocking natural light regardless of source.
- A legal recourse exists for those affected by the proposed development.

Compliance by the Developer

- Access to the site by emergency vehicles is questioned. Non-compliance with fire services notices incurs penalties.
- The applicant stated that they had the support of the Scout Hall but this is not correct.
- The width of the site access is for one vehicle only. How will construction vehicles enter the site?
- How will construction hours be managed?

Design

- The proposed development is not in keeping with the architectural style of Arbutus Avenue and Parnell Road.

- The proposed block will be visible above the rooflines of Arbutus Avenue and Parnell Road. As the Council have asked for a revised roof design, this view is not known.
- The issues associated with the Grand Canal conservation area are not known.
- The proposed infill design does not meet design standards. The proposed development is of poor visual design – existing dwellings do not have balconies.

Parking

- Inadequate parking has been proposed. Arbutus Avenue can only accommodate resident's cars. On-street car parking will occur. With poor lighting, an accident may occur.

Conclusion – The appellant has lived on Arbutus Avenue for 18 years and welcomes the development of the vacant site. The proposed development does not address the concerns of the residents. The Board is requested to consider a flood risk assessment, two storey houses on the road or reduction of the proposed block by one floor.

6.5. Applicant Response

6.5.1. It is submitted that the three appellants make inaccurate and unsubstantiated statements. The proposed development has been carefully considered by the applicant and the Planning Authority. The decision reflects the planning history of the site. Welcomes the Planning Authority's decision and is willing to abide by the conditions. The appeals are not supported by evidence. The proposed contemporary apartment block will integrate into and respect the area, conforms to development plan standards and will remove the unfinished development following the 2007 decision. The proposed development will not affect the Scout Hall and will have a minimal impact on the amenity of the appellants. The applicant's response to the issues raised in the three appeals can be summarised as follows:

6.5.2. Response to Scout Group Appeal:

- The appellant fails to recognise that a precedent for this development exists from 2007.
- The high block wall reference of the Planning Authority refers to the boundary wall, not the Scout Hall wall.

- The applicants error on the drawings was brought to the attention of the Planning Authority, who were aware of the error before making their decision.
- The main element of the proposed block is set back 6.35m from the façade of the Scout Hall. The two storey element of the proposed block is 2m from the Hall. The properties on Arbutus Avenue are 24m from the proposed block.
- The zoning objective for the site enables a range of developments, of which apartment development is one.
- The proposed development complies with policies QH7 and QH8 and will integrate with the area.
- Both the separation distance and the Scout Den will protect the residential amenities of Arbutus Avenue from the first-floor level of the proposed block.
- The Scout Hall operates at weekends and evenings and does not require the level of protection that a residential use requires. There are no grounds for the claim that the proposed development will be overbearing given this non-residential use.
- The proposed design, subject to the Planning Authority required changes, fully complies with section 16.2.2.2 of the development plan. The set-back three storey proposed block reflect the character of the area.
- The high-level windows in the Scout Den do not offer any views into the subject site.
- The required changes are not profound and do not require re-examination of the application.
- The Board is requested to dismiss the appeal.

6.5.3. **Response to Susan Reilly Appeal:**

- The site contains a semi-basement that has flooded since construction ceased on site.
- A flooding assessment was undertaken. Storm water attenuation and SuDS have been designed into the proposed development.
- That some of the dwellings on Arbutus Avenue have been extended, would not alter the assessment of the Planning Authority. The proposed development achieves the required separation distance of 22m between directly opposing first floor windows. The Scout Hall provides a barrier between the proposed development and the dwellings on Arbutus Avenue.

- The proposed development will not affect the levels of light within Arbutus Avenue dwellings. The proposed block is to the north-west and over 30m from the houses. The non-residential use of the Scout Hall may not confer a legal right to light.
- The applicant will comply with condition no. 5(c) of the Planning Authority decision regarding construction traffic access, signage and road markings. Adequate car parking is proposed and no overflow car parking will occur.
- The proposed apartment has a different design approach to the existing two storey dwellings. The proposed roof and finishes changes will ensure the development integrates with the area.
- The proposed development can only briefly be viewed from the Grand Canal Conservation Area.
- The subject site is within Area 3 of Map J. Maximum car parking provision is 1.5 spaces per dwelling. The location of the subject site with excellent public transport and cycle options will reduce the demand for car trips. The canal is a clearway and parking is illegal.

6.5.4. **Response to Corr Family Appeal:**

- There are no grounds for a reduction in height or a re-siting of the proposed block. The scale of the proposed development is the same as that granted permission in 2007.
- None of the third parties appealed the 2007 permission.
- There is no potential for flooding, over spill car parking or traffic concerns. The proposed three storey block will not impact residential amenity or privacy.
- The proposed infill development achieves the required 22m separation distance from adjoining houses. The siting of balconies on the southern elevation will protect privacy. The proposed residential development is in accordance with the Z1 zoning objective. There is no evidence the proposal would negatively impact the amenity or privacy of properties in the vicinity.
- The appellants claim regarding separation distances are incorrect.

- The Planning Authority accepted the application as valid. Aerial photographs illustrate the single storey extensions to the rear of the dwellings on Arbutus Avenue.
- Irrespective of any errors made by the Applicant, the Planning Authority correctly assessed the application under the City Development Plan 2016-2022.
- The 12 no. high level windows in the Scout Den are 1.75m above ground and will not facilitate any loss of privacy. The proposed development is located to the north-west of the Den and there will be no overshadowing of the rooflights. The level of protection afforded to the Scout Den should not be the same as that for a dwelling. The proposed block is 6.6m high at the point closest to the Scout Den.

Conclusion: The Board is requested to uphold the decision of the Planning Authority.

6.6. Planning Authority Response

6.6.1. None on file.

6.7. Further Responses

6.7.1. Donore Avenue Scout Group:

- Response to submission of Larry Corr & Family: supports the submission of the Corr Family regarding the impact on the Scout Hall, the lack of a supporting letter from the Scout Group, the absence of the Scout Hall roof windows on drawings and the devaluation of the Scout Hall property.
- Response to submission of Susan Reilly: Welcomes the appellants recognition of the impact on the Scout Hall, the sensitivity of the Hall and the consideration of the proposed development without reference to policies on infill development. Shares the appellants concern that the proposed development will impact on long-established dwellings and the Scout Hall by reason of overlooking, overbearance and over shadowing.

6.8. Observations

An observation on the appeal was submitted to the Board by **Margaret Galvin & Eoghan Ó Scanaill**. The matters raised can be summarised as follows:

- Loss of residential amenity due to the balconies at second floor level and the roof level terrace. This overlooking and loss of privacy is not in keeping with the zoning objective to protect residential amenity.
- Car Parking: the shortfall of car parking will result in on-street car parking. Construction traffic will cause a hazard. The proposed site entrance is not wide enough.
- Flooding: The River Poddle runs in proximity to the site. The proposed development must not cause flooding impacts on existing houses.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions on file. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Flooding
- Impact on Residential Amenity
- Basement
- Over Shadowing
- Car Parking

7.2. **Principle of development**

7.2.1. That planning permission was granted in 2007 for a three storey development of 8 no. apartments is mentioned by a number of the parties to the appeal. As noted in section 4.1.3 above, under Planning Authority reg. ref. 2894/07, planning permission was granted for the construction of a three storey apartment block. The design of the permitted block was similar to that currently proposed. Condition no. 2 required a number of revisions, one of which would result in the number of units being reduced to 8 no. This decision was not appealed. The decision of the Planning Authority was made under the 2005-2011 Dublin City Development Plan, in which the subject site was zoned Z1, which had the stated objective “to protect, provide and improve residential amenity”.

- 7.2.2. Under the current development plan the subject site is still zoned Z1 and the zoning objective remains the same – “to protect, provide and improve residential amenity”. Residential use is permitted in principle. The vision for Z1 zones is that a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and community facilities and where public transport provides access to employment centres. The subject site provides apartment accommodation in an area of two storey dwellings, on a key transport route into the city centre where a wide range of public transport options are available and within walking distance of a number of community facilities. It is considered that in principle, the proposed development is in accordance with the zoning objective. Compliance with the Sustainable Communities and Neighbourhood policies set out in chapter 16 are discussed in greater detail below.
- 7.2.3. The appellant’s concerns regarding inaccuracies on drawings is noted. A site inspection was carried out and the location of the windows and roof lights on the Scout Hall and the eastern boundary wall of the subject site were noted. With regard to the applicants claim that the Scout Group are in favour of the proposed development, the comments of the Scout Group refuting that statement are noted.

7.3. **Flooding**

- 7.3.1. The application was accompanied by a Flood Risk Assessment. The assessment states that it considered the sources and extent of tidal / fluvial flooding, pluvial flooding, overland flow and ponding of localised rainfall within the site. The report notes that the site is in Flood Zone C, that the culverted Poddle River is located 160m to the east of the site and the Grand Canal is 20m to the north. Two flood events are noted: flooding on the Parnell Road in August 1986 and flooding of Parnell Road in October 2011. Historical flooding occurred 300m east of the site which was not affected.
- 7.3.2. Section 4.2 of the flood risk assessment lists no significant flood risk from fluvial, coastal, surface water, urban drainage, groundwater or reservoirs / canals or artificial sources. In terms of drainage impact, the report states that the increase in soft landscaping will lead to a decrease in impermeable area and therefore no adverse effect on flood risk.

- 7.3.3. In terms of design considerations, the FFL of the proposed block is stated to be 22.55mOD, 2.83m above the 1% AEP fluvial flood level of the Poddle River. Access to the proposed basement car park is stated to be 22.30mOD. In terms of ground water, the assessment states that the possibility of high groundwater levels and likely connectivity to the Poddle River requires site investigations and suitable basement construction measures such as tanking of walls and floors.
- 7.3.4. The assessment section on foul and storm water attenuation (section 5.2.5) refers to the assessment undertaken in 2007 which will be “in line with GDSDS and current best practice management with established Dublin Corporation guidelines”. The summary of the flood risk and mitigation measures is that being entirely within Flood Zone C and above the fluvial flood level, all risks are mitigated against. Table 5.2 of the assessment notes that residual risks exist from an underestimation of the fluvial flood level, however the 2.83m freeboard above flood levels renders the risk improbable.
- 7.3.5. The drainage division of DCC in a report dated 20/11/2017 noted no objection to the proposed development, subject to standard conditions. I note that the drainage assessment submitted with the application dates from December 2006 and that no reference is made in any of the documentation submitted by the applicant to the cause or source of the current large water body on site. Notwithstanding that the subject site is located in Flood Zone C, I raise a concern that the drainage assessment of the proposed development is ten years old and that the significant water body on the subject site has not been addressed – with the exception of a single reference to “ponding of localised rainfall on site” in section 1.3. The applicant in their response to the appeal of Susan Reilly, acknowledge that the site “has had the misfortune of flooding over the ten years or so since construction has ceased”. The applicant states that storm water attenuation has been incorporated into the new design that will address the matter. However, as noted above the drainage assessment for the proposed development is dated December 2006 and refers to the previously permitted development. Likewise the drainage detail drawings submitted with the subject application all date from April 2007 and relate to the previously permitted application.

7.3.6. It is considered that the issue of flooding on the subject site has not been satisfactorily addressed. Measures to address the localised flooding have not been presented or incorporated into the proposed drainage assessment.

7.4. Impact on Residential Amenity

7.4.1. The Housing Strategy of the City development plan states that 3,650 units will be accommodated in Z1 and Z2 residential zones. The Core Strategy of the development plan states that the policies and objectives of the plan “promote intensification and consolidation of Dublin City, all of which lies within the metropolitan area”. One of the ways listed as achieving this is infill and brownfield development.

7.4.2. Infill development is described as being “gap sites within existing areas of established urban form”. That the subject site qualifies as “infill development” was raised by a number of the appellants. They stated that the Planning Authority had failed to assess the development as “infill”, concentrating on the internal design standards and ignoring the wider setting and context. Section 16.2.2.2 of the development plan regarding infill development notes that it is particularly important that proposed development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape. The plan states that the Planning Authority will seek to ensure that any infill development respects and complements the prevailing scale, architectural quality and the degree of uniformity in the surrounding townscape.

7.4.3. The subject site, in my opinion, is more accurately classified as a “backland site”. Section 16.10.8 of the development plan defines backland development as “development of land that lies to the rear of an existing property or building line”. Section 16.10.8 states that the City Council will allow for the provision of comprehensive backland development where the opportunity exists, while noting that the development of individual backland sites can conflict with the established pattern and character of development in an area. The section notes that backland development can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. As such applications for backland development will be considered on their own merits.

- 7.4.4. In terms of overshadowing, the subject site is located to the north-west of the dwellings and Scout Hall on Arbutus Avenue. The set back of the second storey and the separation distance between the proposed block and the existing dwellings on Arbutus Avenue are sufficient to prevent any overlooking of the existing dwellings.
- 7.4.5. At the closest point, the second floor and communal terrace of the proposed block are approx. 25m from the rear elevation of the dwellings on Arbutus Terrace. This complies with the required 22m separation distance between directly opposing windows. In terms of overlooking from window to window, I am satisfied that this will not occur. With regard to the appellants concern that the location of a communal roof garden at the second floor will facilitate overlooking of the private rear gardens of the dwellings on Arbutus Avenue, I am satisfied that the separation distances proposed are sufficient. I accept the applicant's assertion that Scouting is a non-residential use that will occur at evening and weekends. This would coincide with the use of the communal roof terrace by residents of the proposed block. It is considered the proposed 1.8m high glazed screen will mitigate against any overlooking of either the Scout Den roof windows or their outdoor area.
- 7.4.6. I am satisfied that the proposed development being a self-contained development on a backland site, can create its own design aesthetic, without need to complement or refer to the wider architectural pattern of the surrounding area. The proposed mansard roof is acceptable, as are the proposed external finishes and materials. The proposed development will not impact the residential amenity of the surrounding properties in terms of overlooking, overshadowing or impact on privacy. The currently vacant site has no mature vegetation or screening and will be improved by the proposed development.

7.5. **Basement**

- 7.5.1. Section 16.10.15 of the development plan the Planning Authority sets out the considerations for permitting basements. The plan states that primarily the development must be guided by the characteristics of the site, should generally not exceed the footprint of the building and should not extend to more than 50% of the amenity / garden space. Policy SI13 states that they will not be permitted in Zone A or B flood zones. The subject site is located in Flood Zone C.

- 7.5.2. Section 16.10.15 sets out the criteria that the Planning Authority will take into account when assessing applications for basements. Of relevance to the subject development which proposes only non-residential uses at basement level, is the requirement that the basement not exceed more than 50% of the garden / amenity space. The proposed basement at 421sq.m. is almost double the proposed garden space of 213sq.m. In the context of the subject site where a basement has already been excavated and where the surrounding land uses are all above ground level, this exceedance is not considered material. The development plan policy requires that the impact of the proposed basement on the water table / and or any underground streams and sewers be considered. As noted above, a flood risk assessment has been submitted with the application, however the FRA does not address the existing flooding on site. The proposed development complies with the other criteria namely that a means of access to a place of safety is provided and that SuDs be part of the drainage proposal. The requirement that during demolition and construction works measures must be taken by the applicant to ensure that the structural stability of the adjoining property and critical infrastructure is maintained can be achieved by way of condition should the Board decide to grant permission.
- 7.5.3. As with section 7.3 dealing with flooding above, the outstanding issue remains that of the absence of information about, explanation for or measures to address the existing flooded semi-basement on site.

7.6. Car Parking

- 7.6.1. Nine car parking spaces are proposed at basement level. Section 4.19 of the development plan refers to higher density developments in central or accessible urban locations such as the subject site. The section states that in such areas, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances.
- 7.6.2. Section 16.38.9 of the development plan states that providing a car parking space for apartments in city centre locations provides for family friendly living policies in the city. While it is not intended to promote the use of the car in the city, they can make apartments more attractive for all residents. Where the spaces are not required they can be given over to residential storage of utility uses.

7.6.3. I am satisfied that the location of the proposed development is such that public transport options will be utilised. One car parking space per unit complies with the development plan policy and is adequate. I am satisfied that the proposed development will not cause an increase in on-street car parking and will not result in a traffic hazard. As per the development plan, it is recommended that should the Board decide to grant permission, that a condition be added requiring that each space be permanently assigned to and sold with each apartment and not sublet or leased to non-residential owners or occupiers.

7.7. **Summary**

- 7.7.1. The proposed development is considered to be in accordance with the zoning objective for the area, complies with the development plan policy on back land development and on car parking.
- 7.7.2. The outstanding issue is that of flooding. It is regrettable that the Flood Risk Assessment did not address the site-specific flooding – to either explain the cause or provide a source of the water. It is also regrettable that an up to date development-specific drainage assessment was not submitted with the subject application. It is possible that the semi-basement has flooded through rainfall accumulating the partially constructed basement. Likewise it is possible that an unrecorded water source runs through the site and was encountered during construction. Both scenarios could have a solution. Without such information presented to the Board however, it is not possible to assess the suitability of the subject site for the proposed development. The Board may wish to refuse permission based on this lack of information.
- 7.7.3. Given the acceptability of the proposed residential development and the likelihood of the issue being addressed by way of an up-to-date drainage and flood risk assessment however, it is considered reasonable to recommend that such an assessment be submitted to the Planning Authority prior to the commencement of development. Should the Board decide to grant permission, it is recommended that a condition be attached requiring the carrying out of such an assessment.

7.8. **Appropriate Assessment**

- 7.8.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 **Recommendation**

- 8.1. I recommend permission be GRANTED subject to the following conditions

9.0 **Reasons and Considerations**

Having regard to the pattern of development in the vicinity and the nature, scale and design of the proposed residential building, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of neighbouring property, would not unduly detract from the setting of neighbouring residential and non-residential properties, would represent an appropriate form of residential development that would be compatible with its surroundings, and would be acceptable in terms of pedestrian and vehicular safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

10.0 **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. Prior to the commencement of development, the developer shall submit for the written approval of the Planning Authority, a site specific and up-to-date flood

risk assessment and drainage assessment which specifically refers to the large water body on site, the source of same and measures to address it. 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 interests of orderly development and to ensure adequate servicing of the development, and to prevent pollution.

- 3 The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. One clearly identified car parking space shall be assigned permanently to each residential unit and shall be reserved solely for that purpose. These residential parking spaces shall not be utilised for any purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units.

4. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

6. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

- 7 No additional development shall be erected above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment including the satellite dish shown on the roof plan unless authorized by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

8. The construction stage shall be managed in accordance with a construction management and construction traffic management plan which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include details of noise management measures, dust control measures, arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

Reason: In the interests of orderly development, amenity, safety and sustainable development.

9. 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.

Gillian Kane
Planning Inspector

31 May 2018