



An
Bord
Pleanála

Inspector's Report ABP-300672-18

Development	Demolition of structures currently in guest house use and construction of 5-storey apartment scheme (20 apartments) and associated site works.
Location	98, Merrion Road, Dublin 4
Planning Authority	Dublin City Council Sth
Planning Authority Reg. Ref.	3671/17
Applicant	Bartra Property Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellants	Fionán & Nuala Clifford Timothy O'Donovan Margaret Reid Anne O'Reilly Gerard & Mary Doody
Observer	An Taisce
Date of Site Inspection	21 June 2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at 98, Merrion Road, Dublin, on the northern side of Merrion Road opposite the British Embassy. The site adjoins residential properties to the north and an apartment development to the south. In Shrewsbury Park to the rear of the site there are detached dormer bungalows, which are part of a gated development of dwellings and apartments.
- 1.1.2. The site is occupied by a detached two storey property with a three storey rear extension which has been significantly modified through the addition of the rear extension and outbuildings. The two/three storey building provides tourist accommodation and on the date of inspection a notice stated that no rooms were available for that (Thursday) night; guests could be seen coming and going and it appeared to be a busy establishment. The building is in good condition.
- 1.1.3. A single storey building extends along the north western boundary from the front of the guest house for its full depth. It is fenced off from the remainder of the site by a high timber screen fence and is in separate occupation.
- 1.1.4. The buildings are set well back from the road, behind a gravelled parking area which has two entrances, one towards either end of the road frontage, with parking for 8-10 cars. A vehicular entrance provides access along the south western gable to the side of the house. The south western gable is in two parts with an indent. The older to the front being part of the original dwelling. A grassed area to the rear of the building is enclosed by walls along the south western, north western and north eastern boundaries.
- 1.1.5. Nos 94 and 96 Merrion Road to the northwest are a pair of semi-detached 2 storey + dormer houses.
- 1.1.6. No 96 which immediately adjoins the subject site has a front entrance porch which gives entry to a square reception room with a bay window feature to the front/roadside elevation and a tall window above a short flight of stairs on the gable of the room which provides good daylight/sunlight to the room and stairs. A second reception room to the front of the house leads off this room. A further reception room leads off to the rear and has a window in the gable wall. A clear transparent roof covering over the area between the gable and the boundary with No 98, about the

width of a car and extends along the length of the gable allowing in daylight and sunlight. A small extension has been built over part of the rear of the house and there are double glazed doors from this extension and also from the original house, to outdoor amenity areas immediately adjoining the rear. A portion of the boundary wall between No 98 and No 96 is bulging. The rear garden of No 96 is in two portions, an area nearest the house and a second shaded area at the end of the garden beneath evergreen trees.

- 1.1.7. No 96 has a sign outside the front door indicating that it provides accommodation, but this relates to a former use.
- 1.1.8. No 94 provides B&B accommodation as well as being a family dwelling. The layout appears to be similar to No 96. It has a single storey rear extension along the north western boundary with windows facing south west and also large roof windows to the living area. This area comprises family rooms. There is an open garden to the rear.
- 1.1.9. No 100, to the southwest is a detached block of apartments set well back from the road behind gates. It was not possible on the date of inspection to gain access to this site.
- 1.1.10. To the rear of the site are 66 and 66A Shrewsbury. These are dormer bungalow type dwellings which are part of a gated development of single dwellings and apartments off Shrewsbury Park. No 102 A, within the same gated development, appears to be numbered according to the numbering system on Merrion Road, being to the rear of No 102 Merrion Road.
- 1.1.11. Merrion Road is an important and busy radial route running south from the city centre the R118, with a cycle lane and bus routes. The British Embassy is located on the opposite side of the road.
- 1.1.12. The large rear garden measures from 24 to 26m in length. The site is given as 0.22ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the demolition of structures (872 sq m) currently in guest house use and the construction of 5-storey over basement apartment scheme

(20 apartments) and associated site works. The development will have a front building line much closer to the road than existing. The third and fourth storeys will have a set back from Merrion Road. Of the 20 apartments 3 will be one bed units, 14 two bed units, and 3 three bed units, all with private terraces and balconies. The basement will accommodate 31 car parking spaces including 2 universal access spaces and 9 visitor spaces, 2 motorcycle spaces, ancillary apartment stores, bin stores and service stores; to be accessed via a ramped access within the site.. Revised vehicular and pedestrian access is proposed, 879m² of communal opens space will be provided, 20 bicycle spaces, and at roof level there will be roof plant and 6 solar panels.

2.2. The proposal includes the removal of the existing tree from the public footpath on Merrion Road to provide the vehicular access. The existing access points to the site will be removed.

2.3. A ramp will access the basement car parking spaces. The traffic report states that the proposed ramp will be gated with fob access to residents. Priority will be given to vehicles entering and a level vehicle storage area, is stated to be provided for within the site.

2.4. In addition to the application drawings and details, the application is accompanied by:

Sustainability / Energy Report - JV Tierney & Company Consulting Engineers,

Daylight & Sunlight Report - JV Tierney & Company Consulting Engineers,

Engineering Services Report - Cronin & Sutton Consulting Engineers,

Provision of information regarding appropriate assessment screening – Scott Cawley,

Outline Construction Management Plan - Cronin & Sutton Consulting Engineers,

Waste Management Statement for Demolition, Construction and Operation - Cronin & Sutton Consulting Engineers,

Traffic Report - Cronin & Sutton Consulting Engineers,

Planning Report - Tom Phillips & Associates, and

Design Statement – de Blacam and Meagher Architects.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant planning permission subject to 17 conditions including:

No 3 - Prior to commencement of development the applicant is requested to submit full details of all external finishes to be agreed in writing with the planning authority incorporating the use of a brick with a warmer tone and the side elevations also faced in brick as opposed to the self coloured render finish. A panel of the proposed finishes is to be placed on site to enable the Planning Authority to adjudicate on the proposals. Any proposed render finish is to be self finish in a suitable colour and shall not require painting. Construction materials and detailing shall adhere to the principles of sustainability and energy efficiency and high maintenance detailing should be avoided.

Reason: In the interests of orderly development and the visual amenities of the area.

No 4 - At least one car parking space shall be assigned permanently to each residential unit and shall be solely reserved for this purpose. A Parking Management Plan shall be prepared for the site and submitted for the written agreement of Dublin City Council prior to occupation. This shall indicate how spaces will be assigned and segregated by use.

Reason: To ensure adequate parking provision for the proposed residential units and to restrict commuter parking.

No 9 - All trees shown to be retained on the site shall be adequately protected during the period of construction as per BS 5837, such measures to include a protection fence beyond the branch spread, with no construction work or storage carried out within the protective barrier. (The tree protection measures shall have regard to the Guidelines for Open Space Development and Taking in Charge, copies of which are available from the Parks and Landscape Services Division).

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

No 15 - Prior to commencement of development, the applicant shall enter into an agreement with the planning authority under section 96 of the Planning and Development Act 2000, (as substituted by Section 3 of the Planning & Development Amendment Act 2002) in relation to the provision of social and affordable housing, in accordance with the Planning Authority's Housing Strategy unless the applicant has applied for and been granted an Exemption Certificate under Section 97 of the Planning & Development Act 2000 (as amended).

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000 – 2010.

No 17 - Prior to the commencement of development the applicant shall delineate on a map those areas which are to be taken in charge for the written agreement of the Planning Authority. In relation to those areas not to be taken in charge a Management Company shall be set up. The Management Company shall provide adequate measures for the future maintenance and repair in a satisfactory manner of private open spaces, roads, footpaths, car parks and all services, together with soft and hard landscaping areas, where not otherwise taken in charge by the Local Authority.

Reason: To In the interests of the future maintenance of this private development, in the interests of residential amenity and the adequate provision of community facilities.

3.1.2. The decision was in accordance with the planning recommendation.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. There are two planning reports on file.

3.2.3. The first dated the 10th October 2017, recommends that a further information request be issued on 4 points:

- 1 The submission of satisfactory drainage information and revised plans to ensure all drainage issues are addressed, and consultation with the Drainage Division of Dublin City Council prior submission of revised plans. Sustainable

Drainage Strategy shall be incorporated to manage surface water as set out in the Development Plan 2016-2022. A longitudinal section drawing of the proposed connection to the public sewer shall be submitted indicating pipe size, gradient, depth and route among services in the roadway to establish route for the proposed connection.

2 The planning authority is seeking a further analysis of the impacts of the proposal on nearby residential developments in terms of daylight and sunlight and requests the applicants to indicate via diagrammatic outline sections, the extent to which amendments to the proposed footprint, form and massing of the building could reduce impacts. In this regard, the assessment should focus on the existing condition and the proposed development.

3 The applicant is requested to respond to the concerns of the planning authority in relation to the palate of materials for the apartment block which could be viewed as stark and more commercial in tone. The applicant is requested to submit samples of all external finishes and provide examples of where the materials have been used previously as the long-term maintenance of the materials is critical.

4 The applicant is requested to respond to the concerns of the planning authority in relation to the amenity of the 1 bed units above ground floor whereby the bedroom window directly faces a blank wall which is only 3.9m away.

3.2.4. The report includes:

The site is zoned Z2 'to protect and or improve the amenities of residential conservation areas'.

QH1: to have regard to residential guidelines

Q H 3 i) to secure the implementation of the Dublin City Council Housing Strategy and to require 10% of the land zoned to be reserved for the provision of social and/ or affordable housing.

QH5 – policy to develop appropriately zoned lands for housing.

QH6 - policy to develop neighbourhoods.

QH7 - policy to develop housing at appropriate densities.

QH9 – phasing and ancillary services.

QH13 - flexible and adaptable design.

QH18 to promote the provision of high quality apartments within sustainable neighbourhoods.

CEE12: (i) To promote and facilitate tourism as one of the key economic pillars of the city's economy.

Ch 16.7 height.

16.10 standards for residential accommodation.

Ch 16.4 – density.

16.5 plot ratio Z1 and Z2 outer city 0.5 – 2.0. Indicative plot ratio standards for Z1 and Z2 outer site is 0.5-2.0 with site coverage recommended as 45% for Z2.

Section 7.7 building heights - Outer City Up to 16 m (commercial and residential).

Ch 16 aspect, natural lighting, ventilation and sunlight penetration.

S 16.10.1 communal open space, 16.10.3 communal OS.

The above provisions are cited and the development is found to be compliant with the development plan.

Assessment

The building dates from the 1930's and is not architecturally typical for its time and does not represent a notable example of architectural design.

Breakdown of apartments 15% 1 bed, 15% 2 bed and 70% 3 bed.

The units all measure significantly above the minimum size standards and all comply with the minimum private OS requirements with a large number substantially exceeding the minimum.

Plot ratio is 1.28 :1 and site coverage is 36% both well within limitations for Z2 zoned site. Density is 91 units per ha.

The height proposed is 15.58m with the three storey part having a height of 10.6m which is in line with the areas status as a low-rise part of the city.

The building line is pushed forward from the existing to be more in line with the properties to the west of the site and not the east which are set further into the site.

This is considered to be reasonable, given the development is pulled in from the eastern boundary creating a reasonable separation distance.

The form is stepped in plan and section to break down its scale and to orientate balconies and living areas towards the south. The set back is largest at the northern boundary to provide an open amenity space at this location and to position the building well away from the neighbouring gardens.

There is no consistent style of building along this part of Merrion Road. The adjacent building to the west is white render with elements of brick detailing and painted timber windows. It is proposed to construct the proposed apartment building with a similar palate of materials.

It is to be constructed using a concrete frame with self finished rendered walls and white painted timber framed windows. The areas around the front elevation will be built in white brick. The form of the building is to be its main expression.

The planning authority has concerns regarding the quality of the materials. The photomontages appear stark, cold in palate and somewhat institutional/commercial. It needs to present itself as residential. The long term maintenance is also crucial. Further information is required including on the privacy louvres and their maintenance over time, the balcony railings, the angled windows, etc.

The landscaping plan will also be crucial. The rear of the site has existing silver birch trees the full width of the site and a large Monterey Cypress *Macrocarpa* in the east corner. This will be retained and supplemented with further silver birch trees in planters around the site. Beech hedges are proposed along the perimeter of the site and the private terraces will also have a beech hedge. Benches will be provided at the northern end of the site.

The applicants submitted a daylight and sunlight study. The report concludes that the average daylight factor confirms an overall pass rate of 91.67% for the scheme. In a couple of instances the proposal falls below the assessment with respect of its impact on daylight and sunlight conditions in neighbouring properties at No 94 Merrion Road and No 100 Merrion Road. The applicant states that these results relate to bedrooms, questioned by third parties, which are less sensitive to such impacts. All affected neighbours have objected. The most serious is shown by Figure 16 as compared with Figure 17 in the shadow cast on 21/3 at 12 noon; with particular regard to No 96 Merrion Road. Further information is required. The report should include a June analysis.

The proposal is set back 15m from the northern boundary, 12m including balcony up to second floor. The third floor is set back 19m with an external terrace and the fourth floor 29m. The building is also pulled in from the side boundaries to protect residential amenity of neighbouring properties. The design has been modified from the previous east/west orientation which provided for large amounts of overlooking into neighbouring properties to a more north/south orientation where secondary windows are to the sides. Angled windows and other techniques such as louvres are used to protect the amenity of neighbouring properties. Still some concerns regarding overshadowing.

A further information request was recommended (as set out above), which issued.

3.2.5. Other Technical Reports

3.2.6. Engineering Department – Drainage Division – additional information:

The submission of satisfactory drainage information and revised plans to ensure all drainage issues are addressed, and consultation with the Drainage Division of Dublin City Council prior to the submission of revised plans.

Sustainable Drainage Strategy shall be incorporated to manage surface water as set out in the Development Plan 2016-2022.

A longitudinal section drawing of the proposed connection to the public sewer shall be submitted indicating pipe size, gradient, depth and route among services in the roadway to establish route for the proposed connection.

3.2.7. Roads & Traffic Planning Division – 4/10/17 – A separate access and exit is provided to the existing guesthouse. The proposed development includes the provision of a single gated vehicular access/egress point to the site from Merrion Road. This provides access to the proposed car and bicycle parking spaces. Pedestrian access will be provided by a footpath.

The proposed development includes proposals to remove the existing tree from the public footpath. Prior to commencement the applicant shall liaise with the Parks Department regarding the removal/relocation of the existing tree on the public footpath if required.

The traffic report confirms that the proposed ramp will have a maximum gradient of 1:12.

A two way isle width ramp will access the basement car parking spaces. The traffic report states that the proposed ramp will be gated with fob access to residents. Priority will be given to vehicles entering. A level vehicle storage area is provided for within the site to negate any impact on Merrion Road.

Drawing B057-019 submitted indicates a swept path of delivery vehicles into the site and access to basement car parking spaces.

Parking area 2 Map J of the Development Plan, table 16.1 sets out a maximum parking standard of 1 space per dwelling – 20 spaces. The development will provide 31 car parking spaces 1 per apartment and 11 visitor spaces. A justification for the 11 visitor spaces, is set out in the Traffic Report.

Car parking spaces shall not be sold, rented or otherwise sub-let or leased to other parties.

The Traffic Report concludes that there will be negligible impact on the surrounding road network.

Cycle Parking – 20 spaces provided, in accordance with the development plan; considered acceptable.

The site is well served in terms of proximity to public transport including the QBC on Merrion Road and Dart. A cycle lane is also provided. The applicant will undertake to implement measures for residents outlined in the Mobility Management Framework Plan and to ensure that future tenants comply with this strategy. A Mobility Manager for the overall scheme will be appointed to oversee and co-ordinate the preparation of individual plans.

Construction - an outline CMP has been submitted. A detailed Construction and Demolition Management Plan to be submitted prior to commencement.

Conditions:

- Proposed entry to be agreed with Roads Maintenance Division,
- Liaise with Parks Dept,
- One parking space per unit. Car parking spaces shall not be sold, rented or otherwise sub-let or leased to other parties,

- Construction and Demolition Management Plan,
- Implement measures in the Mobility Management Framework Plan,
- Costs incurred by DCC to be at the expense of the developer,
- CoP.

3.2.8. Waste Regulation Section – Waste Management Division – recommending conditions, including:

- C&D waste and
- Waste standards for apartment blocks.

3.3. Further Information Submission

3.3.1. Further information was received 31 Jan 2018 and includes:

3.3.2. Response from Tom Phillips & Associates in association with de Blacam and Meagher Architects, Cronin & Sutton Consulting Engineers & JV Tierney & Company Consulting Engineers.

3.3.3. Referring to item 1 of the request, a meeting was held with of Dublin City Council's Drainage Division. The proposed SuDS measures include the installation of a green roof, low water usage appliances within the apartment units, a local rainwater storage unit to capture rainwater for reuse, and an attenuation tank to limit storm water flows from the site. A longitudinal section of the proposed connection to the public sewer is provided (drg no B057/012 Rev A).

3.3.4. Referring to item 2 of the request, the daylight/sunlight results submitted with the planning application are referred to:

average daylight factor confirms an overall pass rate of 91.67% for the scheme, daylight/sunlight impact to neighbouring properties - the proposed development will have no impact on No 96 Merrion Road, No 66 Shrewsbury Park and No 66A Shrewsbury Park. In a limited number of instances the proposal falls below the assessment criteria with respect to impact on No 94 Merrion Road and on No 100 Merrion Road, A number of these results relate to bedrooms which are less

sensitive. The results are also attributable to the existing fenestration arrangements which compromise existing daylight/sunlight conditions.

Further to the request an informal telephone conversation took place with DCC Planning Officer who confirmed that particular concerns arise in relation to the impact on the amenity of the rear garden of No 96 Merrion Road.

A supplemental daylight/sunlight impact on the rear garden of No 96 Merrion Road has been prepared for the hours of 8.00am to 12.00am in March, due to the low position of the sun at this time of year. From 12.00 onwards the percentage of daylight/sunlight received will increase with no impact resulting by 4pm.

The images included are for illustrative purposes. This methodology is not covered in the document Site Layout for Daylight and Sunlight. The methodology in Site Layout for Daylight and Sunlight is used in the original submission i.e. to assess if 50% of the garden can receive more than 2 hours of sunlight during the equinox. Under this methodology, the garden of No 96 meets the criteria.

The supplemental daylight/sunlight impact has considered June and confirms that the proposed development will have no impact on the daylight/sunlight received in the garden. The daylight/sunlight in the garden will remain consistent through all summer months.

The response confirms that while a number of daylight/sunlight impacts will arise to the neighbouring properties, these are limited.

Referring to item 3 of the request, de Blacam and Meagher Architects have provided a series of reference images of the proposed materials for the apartment scheme including a justification for the chosen design concept.

Referring to item 4 of the request, de Blacam and Meagher Architects have proposed an alteration to the design of the relevant 1 bedroom units at ground first and second floors, an additional corner window is proposed, orientated to face south-west towards the afternoon sun, with an oblique view towards Merrion Road. The orientation will also reduce the perception of overlooking.

3.3.5. Documentation provided:

Drawings and illustrations - de Blacam and Meagher Architects,
Report on item 1 - Cronin & Sutton Consulting Engineers

98 Merrion Road Daylight & Sunlight report - JV Tierney & Company Consulting Engineers.

3.4. **Third Party Observations**

3.4.1. Third party observations have been read and noted.

3.5. **Further Reports**

3.5.1. Planning Report - 11/12/17, refers to the further information response and includes:

Re. the response to item 2 of the request, the planning authority consider that the development will not have an unduly injurious impact on the neighbouring properties and in particular on No 96 Merrion road, whereby the development will have its biggest impact during the winter months in relation to overshadowing.

Re. the response to item 3 of the request and the palette of materials, the applicant states that the design is conceived as a building set in a garden. The building steps back and forward in plan and the shadows cast by this will be accentuated on the white surfaces of the building. The facades are proposed to be made of white brick to the road and self finished white render to the sides and rear. They note a number of white brick buildings around Dublin. They have used self finished white render as a finish on a number of buildings, which remain in good condition. The scheme also will have plants growing over them.

There is still some concern regarding the visual impact of the white brick given the scale of the building and therefore it can be conditioned that the brick is of a warmer tone. It is also considered that given the scale of the side elevations that these should also be faced in brick and not render as proposed, given that the scale of the building is in its depth and not width.

Re. the response to item 4 of the request, the corner window is acceptable and deals with the issue of concern.

While it is acknowledged that there will be some negative impacts on the neighbouring property at No 96 in relation to overshadowing at the equinox periods, the development still complies with the requirement to provide 2 hours of direct sun to 50% of the rear garden. The impact is substantially less during the summer months and it is considered that the impact is not unduly injurious.

- 3.5.2. Engineering Department – Drainage Division – 8/12/17- conditions including:
Submission of an appropriate flood risk assessment.

4.0 Planning History

4118/16 withdrawn

1214/01

2588/96

1023/94

0836/94

2533/91

No details given.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan 2016-2022 is the operative plan, relevant provisions include:

The site is zoned Z1 'to protect and or improve residential amenities'.

Plot ratio - Z1 45% – 60%

Site Coverage - Z1 and Z2 Outer City 0.5 – 2.0

An overarching theme of the plan is the need to achieve higher densities which makes more efficient use of land and energy resources, creating a consolidated urban form which fosters the development of compact neighbourhoods and critical mass, and contributes to the viability of economic, social, and transport infrastructure.

Other relevant provisions are as cited in the planner's report.

5.2. **Dublin City Council Development Contribution Scheme 2016 - 2020**

The Dublin City Development Plan gives the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. The Plan provides that, in the event of the planning authority considering a site to be too small or inappropriate to fulfil Dublin City Development Plan requirements for open space provision, a financial contribution towards provision of or improvements to a park and/or enhancement of amenities in the area in line with the City's Park Strategy shall be required.

5.3. **Sustainable Urban Housing: Design Standards for New Apartments** **Guidelines for Planning Authorities**, Department of Housing, Planning and Local Government March 2018

Aspects of previous apartment guidance have been amended and new areas addressed.

Bicycle Parking and Storage

An important context for these guidelines is a likely significant population increase in our cities and urban areas over the next two decades. These guidelines aim to secure wider Government policy to achieve more sustainable urban development that will enable more households to live closer to their places of work without the need for long commuter journeys and disruption of personal and family time; (enabling citizens to more easily get around our cities and urban areas is a fundamental planning concern) and maximising accessibility of apartment residents to public transport and other sustainable transport modes is a central theme of these guidelines.

Cycling provides a flexible, efficient and attractive transport option for urban living and these guidelines require that this transport mode is fully integrated into the design and operation of all new apartment development schemes. In particular, planning authorities must ensure that new development proposals in central urban and public transport accessible locations, and which otherwise feature appropriate

reductions in car parking provision, are at the same time comprehensively equipped with high quality cycle parking and storage facilities for residents and visitors.

The accessibility to, and secure storage of, bicycles is a key concern for apartment residents and apartment proposals must respond accordingly to the requirements in their design and provision of cycle storage facilities. Requirements of these guidelines include:

Quantity – a general minimum standard of 1 cycle storage space per bedroom shall be applied. For studio units, at least 1 cycle storage space shall be provided. Visitor cycle parking shall also be provided at a standard of 1 space per 2 residential units. Any deviation from these standards shall be at the discretion of the planning authority and shall be justified with respect to factors such as location, quality of facilities proposed, flexibility for future enhancement/enlargement, etc.

Car Parking

The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.

In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances; particularly in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

These locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.

5.4. Natural Heritage Designations

The South Dublin Bay SAC site code 000210 and South Dublin Bay and River Tolka SPA site code 004024, are the nearest Natura sites, located less than 1km away.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Third party appeals against the decision to grant permission have been submitted by:

Anne O'Reilly, 102A, Shrewsbury, Ballsbridge,

Sheridan Woods on behalf of Gerard & Mary Doody, (second floor apartment and owners of) 100 Merrion Road, D4,

Reid Associates on behalf of Margaret Reid, 96 Merrion Road, D4 (which includes an oral hearing request),

Timothy O'Donovan, 102 Merrion Road, D4, and

Fionán & Nuala Clifford, Andorra B&B, 94 Merrion Road, D4.

- 6.1.2. The grounds stated in these appeals includes:

- 6.1.3. Fionán & Nuala Clifford; the grounds includes:

Privacy

Overlooks No 94's rear return, from stairwell, 6 windows and 4 balcony doors and 58m of balcony terrace railings. The vertical slats aid overlooking. This property is a three storey house with a long single storey rear return which is the home of the Cliffords. Their windows face within 90° of due south. The site plan omits their return. Their photographic evidence was ignored.

Figure 14 shows them bathed in sunlight and Figure 15 show it gone.

Shadowing & streetscape - 4117/04 a DCC refusal for demolition of two houses at the corner of Merrion Road and Shrewsbury Road and construction of a three storey over basement apartment development (11 x 3 bed and 1 x 2 bed), same reasons apply.

Condition 5) construction time from 7am – 6; 8am as a start time would be better.

Demolition – no proven necessity has been shown.

CEE 12 re tourism – the development would be contrary to this policy.

6.1.4. Timothy O'Donovan: the grounds includes:

Architectural form & character with uncharacteristic width & depth.

Intrusive & injurious to amenities of neighbouring properties.

Excessive scale & density.

Existing is 872 sq m proposed is 4,035 sq m - 4.63 times larger.

91 units per ha.

Urban grain and plot form and pattern of development obliterated.

Material change in front and rear building lines.

Would dominate and overwhelm.

Height 21.4m to lift overrun.

Proposed setbacks of 3rd and 4th floors are insignificant.

Would dwarf surrounding dwellings.

53.7m deep.

Disruptive of the visual amenity of Merrion Road and visual dominance of adjacent houses.

10m forward of existing front building line, more than 10m forward of existing rear building line.

Overlooking, overbearing, reduction in value.

Parking exceeds development plan standards.

Traffic hazard - conflict with bus, cycle route, pedestrians and cyclists.

Choice and quality of materials – condition excludes the public.

6.1.5. Margaret Reid; the grounds includes:

Pre-app consultation – previous withdrawn application is not referred to in the subject application. Impact on residential amenity, particularly light, was raised. The density has increased, the depth has increased.

The footpath along the shared boundary would lead to disturbance day & night.

No information on plant extraction system & noise levels.

No construction method statement – crane fixing, oversailing, agreement for monitoring of vibration levels.

Consultants state that no site investigations have been carried out. The third party has photographs of rigs for site investigation and is concerned that there is evidence of the need for rock blasting.

Sunlight/daylight the further information requested 'The planning authority is seeking a further analysis of the impacts of the proposal on nearby residential developments in terms of daylight and sunlight **and requests the applicants to indicate via diagrammatic outline sections, the extent to which amendments to the proposed footprint, form and massing of the building could reduce impacts.** In this regard, the assessment should focus on the existing condition and the proposed development.

There were two elements to the request. An informal phone conversation re-interpreted the request to limited analysis of impact on rear garden amenity.

The second sunlight/daylight report is not supported by the request. Key issues in relation to adverse impact on No 96 have been overlooked and obscured.

Clarification or a refusal should have issued.

The problems:

No 96 is a residence not a guesthouse

Windows were omitted – the entire south-eastern gable.

The orientation of No 96 to the south-east captures daylight and sunlight and with the open character enjoys high levels of sunlight/daylight.

Stepping forward of the building line 14m to within 4m of Merrion Road have an adverse impact on sunlight/daylight and overlooking.

They have had to engage an independent consultant, Chris Shakleton Consulting, to undertake a review of the sunlight/daylight assessment. Windows in the SE gable and NE ground floor fail. Light in the reception area will be adversely and significantly diminished. Light in kitchen and dining rooms will be adversely and significantly diminished, as will the nearest garden area.

Instead of mitigation by revision, an inadequate assessment was used.

Misleading documentation – failure of compliance with the appropriate standards in the sunlight/daylight assessment. No 94 and 96 are not guesthouses but dwellings – this is an attempt to convey an image of a mixed use urban area. The street tree is shown as removed, no letter of consent has been supplied and it is not included in the red line boundary. Excavation and building works for the basement are within the crown spread of street trees. There is no report from the Parks Department, condition 11 (ii). No 96 Merrion Road is incorrectly shown on the site section as No 100 Merrion Road. There are no accurate ground levels for No 96. The development appears to extend 4m below the ground floor level. The basement is shown as 1.6m to 1.7m from the boundary with No 96. On other sections this is shown as 2.4m distance. The secant piles are 1.2m distance. Associated concerns – undermining foundations, de-watering of ground and destabilising of property. The building line is brought forward 17.7m from existing, which should be shown in the context of the existing building line. The description, describing setting back floors from Merrion Road, is misleading.

Photomontages are misleading, re traffic on Merrion Road and the presence of the street tree which is to be removed. The proposed development will be seriously disruptive and overbearing within the established streetscape of this section of Merrion Road. View 6 shows an expanded garden area to the rear. The proposed block would extend 25.6m beyond the rear building line of No 96 and would present a wall of development, blocking the southerly aspect and sun.

Flood Risk has been ignored. The basement is proximate to the Dodder flood risk zone. The development fails to comply with SuDS. The attenuation is of no benefit as it is below the 30 year and 100 year flood level. Additional volumes added to the combined sewer would have adverse impacts on Dublin Bay. Any failure of the attenuation tank or foul tank, pose risk to the adjoining property.

This location is the most problematic on the Dodder for flood risk. Flooding events 1996, 2002 and 2011 occurred with flood water 600mm at the Bank Centre and 450mm on Merrion Road. A basement is not acceptable. A desktop study is insufficient. Flood defences downstream may have an impact on this site.

The Drainage report identified the need for a flood risk impact assessment, condition 10 (vii) assumes a satisfactory assessment. This issue was not integrated into the decision-making process. The permission is premature pending a full assessment.

There is no justification for the demolition of the buildings which would set an adverse precedent. No 96 is an example of the Arts and Crafts Design which contributes significantly to the streetscape character of the area. It is not a three storey dwelling but incorporates a third level within the roof as an architectural feature of the Arts and Crafts Design. Particular features of the Arts and Crafts Design are the relationship with the rear garden and the hallway as a focal point and living room. Its previous B&B use has long ceased.

Internet reviews of the existing guest house on the subject site attest to its viability. The existing building is important in establishing the limits of an appropriate scale, massing and building line for future development. The demolition is driven by the demand for car parking.

The proposed demolition and redevelopment does not comply with the development plan policy for infill and would set an adverse precedent. It is a major redevelopment scheme and not an infill. There is no question of fitting in. It would be contrary to section 16.2.2.2 of the development plan. It would dominate and seriously detract from the existing residential character of the area.

This side of Merrion Road must be differentiated from the opposite side – Clayton Hotel, British Embassy, RDS. The apartment development at the junction of Sandymount Ave and Merrion Road was located at a prominent junction and not mid street. It is part of an urban block and more of an urban streetscape. There is no precedent within the area to justify the erosion of the residential amenity of No 96 on such a scale.

The proposed development form is not supported by National Policy as set out in Sustainable Residential Development for Urban Areas. Increased density must be balanced to ensure integrated development that accords with development plan policy.

The development plan refers to achieving efficient use of land, appropriate to its context, while avoiding the problems of over-development. National policy emphasises the need for acceptable building heights; avoidance of overlooking and overshadowing. Particular sensitivity is required in relation to the design and location of apartment blocks which are higher than existing adjacent residential development. It exceeds the height stipulation of 16m max in outer suburban areas. The guidance density is 50 units per ha, proposed is 91 per ha. It fails to address the key question: does the design and location of new apartment blocks respect the amenities of existing adjacent housing in terms of sunlight and overlooking?

Excessive Scale and Density – existing floor area - 872 sq m, proposed - 4035 sq m: the size of 20 large houses. The development strategy is pursued as if the site was in the city centre or the docklands.

Site coverage – for a residential zone the standard is 45% to 60%. The stated coverage is 40%. A more accurate and realistic assessment of site coverage based on the area of the basement of 1342 sq m would amount to 60%.

Plot ratio - for a residential zone the standard is 0.5 to 2. The proposal is 1.28. the existing is 0.4. The pattern of development supports a plot ratio in the lower range.

Height for the outer city is 16m. the maximum height should be constrained by reference to the Arts and Crafts dwelling 15.9m. The proposal: eaves height of 10.9m and to lift overrun 21.4m; is excessive. The added height of two / three additional floors is exacerbated by the massing and bulk.

Visual Impact Assessment – the view (6) from the third party's garden is misleading. Views 1 and 2 are misleading. The true extent of the overbearing visual impact is more evident from the section drawing.

Material Contravention of Development Plan Policy & Objectives.

Zoning - Z1 'to protect and or improve residential amenities' applies to neighbouring properties. The site is incorrectly referred to as Z2 in the planning report. The development up to five storeys in height at a distance from c5m to c7.8m from the third party's dwelling will materially and adversely impact directly on sunlight and overshadowing and daylight to the main dwelling. The reduced set back has the effect of blocking sunlight from the main living room and reception area.

Overlooking - The corner windows, introduced in response to the further information request, directly overlook the third party's property. There is substantive overlooking over five floors from both windows and terraces. The apartments referred to are apt 8 (6m distance) and apt 6 (11m distance) at first floor, and at second floor apt 14 (6m distance) and apt 12 (11m distance) and at third floor apartments 18 and 19. The obscure glazing and timber screens proposed as mitigation are limited. Large terraces at second, third, fourth and fifth floors would overlook.

Visually overbearing and adverse impact on streetscape – they refer to the section drawing in this regard and to the render façade which has poor weathering characteristics.

Impact of excavation on structural integrity of third party's dwelling. Soil investigations and foundation conditions of third party's property – there are areas of soft sandy soil at a depth of 5.8m. the excavation works would have significant implications for dewatering of the subsoil and risk of subsidence. Site investigations already carried out have not been included, which undermines transparency and warrants concern. The logistics of construction need to be considered in advance of planning to determine risk and impacts on neighbouring property.

Traffic Hazard – the proposed access is located in the immediate vicinity of a bus stop and a cycle lane, and has a single lane ramp; queuing and amenity issues and disturbance to adjoining property.

To exit towards city centre, traffic would have to cross the flow of traffic to turn right; stopping both lanes of traffic. There is limited visibility for pedestrians and cyclists. The British Embassy opposite uses a Garda to stop traffic. The existing guest house relies on taxis and the parking is rarely full. There will be a significant increase in traffic movements. The traffic report relies on TRICS data and did not consider the number of parking spaces. The conclusion is unsustainable. The suggestion that the 11 excess parking spaces provide for visitor parking is unsubstantiated. Persons unfamiliar with the entrance might try to turn off the road without having the appropriate access fobs or security. The location warrants limiting car parking.

The applicant has proposed and justified the height of the proposed development on the basis of proximity to public transport and yet the entirety of the traffic assessment and car parking design is premised on a car based solution which would generate car based commuting from the site which is contradictory, contrary to national policy

to minimise demand for car based travel and contrary to the development plan car parking strategy and would undermine implementation of any mobility management strategy.

The permission by the Board for the extension to the guest house was based on dual access and exit which was considered helpful for traffic accessing and exiting at the same time. The traffic report has underestimated traffic generated in the context of over provision of parking spaces.

The peak period was not defined. The increased traffic, requiring queuing would conflict with the main QBC route, cyclists and pedestrians. There was a recent traffic accident in this area and the history log of accidents should be consulted.

The applicant has no control over the removal of the tree, such that the access is not feasible and would give grounds for judicial review.

The allocation of 31 car parking spaces to 20 apartments is in contravention of development plan standards.

The proposed development by itself and the precedent it would set would adversely affect the use of a major road by traffic.

They request refusal.

The grounds is supported by submissions from:

Chris Shakleton Consulting on Skylight, Sunlight and Shadow Impacts, and MT Hamm on Engineering issues.

6.1.6. Gerard & Mary Doody; the grounds includes:

The principle living area is along the north western side and enjoys a terrace that opens to an open plan living area. A second terrace is located along the north-eastern elevation. There are windows serving other apartments along the north western side of the property at ground and first floor. The proposed development has balconies at ground, first and second storey facing the third party's property and on the north-eastern façade facing Shrewsbury Gardens. Large terraces at third floor wraps around the front and side of the block serving two apartments and at fourth floor a terrace serves one penthouse apartment commanding views towards the third party's second floor terrace and the garden that provides communal space to the

apartments within the third party's property and the third party's site to the rear. A drawing is provided showing the direction of view and a table showing the distances. A conservation report is referred to and provided, which states that the existing dwelling to be demolished may be of social, historical or local interest and there is a reasonable case to be made for its retention; and section 16.10.17 of the development plan is referenced regarding the retention of buildings which are not protected.

Section 16.2.2.2 of the development plan is referenced re infill development.

Section 16.10.10 of the development plan is referenced re infill housing.

The proposed development presents an incongruous and overbearing form in the context of the streetscape.

Section 16.10.8 of the development plan is referenced re backland development.

The rear building line extends 10m beyond the rear building line of No 100. It will cause a significant loss of amenity to existing properties, including loss of privacy, overlooking and noise disturbance, and should be refused.

Height – low rise outer city 16m max - section 16.7.2 of the development plan is referenced. It measures 15.840m above the finished floor level and 17.225m above the rear garden level. A table of other relevant heights is given. The proposed development is not contextual and doesn't accord to policies re building height. The existing apartment building on Sandymount Ave is used as rationale. The context is significantly different: facing the junction and within the context of an existing four storey apartment opposite facing the junction. Notwithstanding its location within 500m of a rail hub, the context should inform the scale.

Impact on amenities: light, overlooking, overbearing and the extent of balconies – illustrated in View 7.

The daylight and sunlight analysis – existing windows - 1, 7 and 8 of the report which currently meet criteria, will suffer a reduction of 36%, 31% and 33.35%, and will fall below criteria. There is also a reduction in the VSC of other windows notwithstanding their current standard being below criteria. A reduction of 20% is stated to be noticeable. No VSC is given for window 6. The sun on ground assessment, assesses the rear garden as if it comprises the overall depth to Shrewsbury Gardens whereas the depth is as indicated by the third party and the assessment should be carried out in that context.

Noise and disturbance – balconies - private open space to living rooms will have a severe adverse impact. In contrast to the attempts to mitigate overlooking to the northwest there has been no attempt to mitigate overlooking of the third party's property, and should be refused.

Overbearing impact – as view 7 illustrates the open character of the third party's garden will be altered and the development will generate a severe overbearing impact, and should be refused. A photo of the existing situation is provided.

The development will devalue the third party's property, and should be refused.

The amenity of proposed development is critiqued – the aspect, quality of light and sunlight will be impacted because of proximity to boundaries. Along the SE façade balconies will have limited sunlight at lower levels. Bedrooms along the NW elevation will not have any sunlight and a poor aspect due to oblique windows. Bedrooms along the ramp to the basement car park and bin store access will have adverse noise conditions, poor aspect etc. The communal open space to the rear is of limited amenity value. The site planning results in a compromised layout that will generate poor quality residential amenity and should be refused.

Impact on existing tree – the Monterey Cypress and silver birch trees are to be retained but the alignment of the basement and its impact is queried. The root system of the Monterey Cypress, which contributes significantly to the character of the rear gardens, will be compromised.

Excessive car parking and traffic - 20 spaces max per development plan, 31 proposed, in excess of standards, acceptable only in exceptional circumstances; per development plan chapter 15, standards should not be exceeded. The proposed forecourt is insufficient to facilitate potential traffic movement. The swept path manoeuvres highlight the extent and number of movements required. There is potential for significant obstruction to occur during refuse collection and in relation to drop off and pick up at the forecourt.

Precedent – the conditions of facing development and context differs from that at the junction with Sandymount Ave. it cannot be relied on as a precedent.

The grounds is supported by a submission from Dermot Nolan, Conservation Architect.

6.1.7. Anne O'Reilly; the grounds includes:

Nature and Scale – that at the junction with Sandymount Ave cannot be relied on as a precedent. It is on an entirely different axis/building line to the houses on that road. Balconies on the SE elevation will lead to overlooking of the third party's and others' residences in Shrewsbury.

A shadow drawing was not done in respect of third party's property.

Demolition and re-orientation is inappropriate and could lead to similar at Nos 104 and 100.

Third party has lived in the area since 1967 and believes that the area from the junction with Sandymount Ave to the entrance to Shrewsbury Park was historically an infill dump, that the soil is loose and that this hasn't been adequately taken into account.

Transport and parking – there is no longer a requirement for the number of parking spaces. The traffic report was prepared at a time which does not reflect the true traffic where there is persistent congestion and where access and egress will be dangerous.

The planning notice should have been placed on the public road at the entrance to Shrewsbury.

6.2. Applicant Response

6.2.1. Tom Phillips & Associates has responded to the grounds of appeal on behalf of the applicant, the response includes:

The density accords with policy – there is a need for more homes in towns and cities; and a need for apartments.

Scale height and massing – the height is compliant – outer city 16m, up to 24m for rail hubs. Proposed is 10.5m – 15.8m set back to front, informed by the height of neighbours. It will substantially read as 3 storey, when viewed from street level; 4th & 5th floors are consistent with the height of other buildings in the vicinity. A generous open space area is retained – 879m², reflective of the character of the existing area

and others along Merrion Rd. Site coverage is 36%, lower than the permissible range of 45% to 60%. Plot ratio 1.28:1 is within the permissible range 0.5-2.0:1.

Overlooking - overlooking of Shrewsbury is unfounded – significant distance to gable of 66A and 66, and retention of trees. No 102A is 40m distance. The distance to No 94 is 14m, which is generous in an inner suburban context. The northern elevation has been designed to address overlooking. There is a setback of 5.2m – 9m at ground level from the boundary with No 96, increasing to 7.8 – 10.7 at third floor and 7.8m at fourth floor. Fenestration onto this boundary includes opaque glazing to bathrooms, oriel windows to bedrooms and the use of timber slats to living room windows, which collectively will serve to mitigate overlooking of this property. The generous plot sizes and the design response will serve to minimise undue overlooking of the adjoining residential dwellings.

Daylight / sunlight impacts – A further report on Daylight & Sunlight is submitted from JV Tierney & Company Consulting Engineers.

Development character / visual Impact – de Blacam and Meagher's design statement accompanied the application and a further response from de Blacam and Meagher is provided in response to the grounds of appeal. The building is conceived as a pavilion in a landscaped garden, surrounded on all sides by lawns, hedges and trees. The front of the building aligns with Nos 94 and 96 Merrion Road while the stepped rear elevation broadly follows the rear of No 100. The building is stepped in plan and section to reduce its mass and to define each apartment individually within the block. The setback at third and again at fourth floor keeps the mass towards the Merrion Road side of the site.

There is no consistent style of architecture along Merrion Road.

The design reflects the use of the building as a series of apartments, with the main expression to Merrion Road being generous balconies to living spaces. The building's appearance as a generous domestic building is appropriate and reasonable in its setting. They accept condition no. 3 of the decision and will agree external finishes prior to commencement.

Demolition of existing house – the existing construction and layout of the building would require major alterations to meet modern building regulations/ heat energy ratings and modern spatial / living standards. The architects are of the opinion that a remedial solution is not viable. Regarding the conservation report from Dermot Nolan

Conservation Architect, provided with the grounds of appeal, the response states that apart from the name over the door the existing house does not include any features of interest to associate it with CT Hafner or his family's business. The association is not of such significance to merit retention of the building.

Traffic / Access/ Parking – a response is provided in a report by Cronin & Sutton Consulting Engineers.

Construction management - Cronin & Sutton Consulting Engineers report is submitted in response to this issue. The applicant will comply with the requirements of all conditions regulating construction works as deemed appropriate by An Bord Pleanála.

SuDS / Flood Risk - Cronin & Sutton Consulting Engineers report is submitted in response to this issue.

Other:

Re that the planning notice should have been placed on the public road at the entrance to Shrewsbury. The application submitted was in full compliance with the requirements and was deemed valid.

Removal of street tree - the tree is outside the red line being on the public footpath under the control of Dublin City Council. The need to remove the tree was identified in the application documents. The development has been accurately described in the statutory notices.

The de Blacam and Meagher response refers to the accuracy of the photomontages.

The daylight and sunlight study was undertaken in accordance with the document Site Layout Planning for Daylight and Sunlight by Paul Littlefair.

6.2.2. Accompanying the response are other reports:

6.2.3. De Blacam and Meagher Architects response includes:

The building is conceived as a pavilion in a landscaped garden.

Photographs of buildings in the surrounding area are provided.

Re reference to selective choice of CGIs (Computer Generated Images) – 1 & 2 are views in each direction along Merrion Road; 3 & 4 were prepared to allow the assessment of the impact from the two streets to the rear; 5, 6 and 7 were prepared to provide information to assess impact from rear private gardens, so these views

were prepared as CGIs rather than photomontages, which they submit is a comprehensive and reasonable approach for the purpose of visual impact assessment.

Regarding the conservation report from Dermot Nolan Conservation Architect: regarding streetscape – the existing streetscape is extremely varied comprising 3, 4 and 5 storey buildings of varying styles and dates. The proposed building can be easily accommodated within this varied setting.

Regarding the association with CT Hafner, apart from the name over the door the existing house does not include any features of interest to associate it with CT Hafner or his family's business. This association alone is not of such significance to merit retention of the building.

Re accuracy of details that No 96 is a private house - No 94 Merrion Road is listed as Andorra House B&B and No 96 Merrion Road is listed as Wynward House B&B.

Re accuracy of details - removal of street tree – it is proposed to remove this tree and replace it with a new tree located adjacent to the entrance area to the proposed apartments. It is a relatively small tree and not of major significance to the streetscape. They will comply with the condition to liaise with the Parks Department.

Site section plans incorrect notation for No 96 and No 100 - a corrected notation is shown.

Re ground levels of No 96 relative to the proposed development – the ground levels are broadly the same as within the subject site to front and rear.

Re set back distances to boundaries – these are shown on plans and sections. The boundaries are not fully square and distances from building to boundary therefore vary.

The building line, that the front building line should have been shown in the context of the existing building line, the drawings clearly indicate the position of the existing building line on the site.

Re photomontages – view 1 - the existing tree is removed in this image and the proposed tree to the front of the entrance is the tree indicated. View 2 - the trees in the foreground are the existing trees to the east side of the site at the boundary of No 100. View 6 is an accurate projection from the position shown and is included to show the view of the west elevation from neighbouring rear gardens to the west.

6.2.4. The Cronin & Sutton Consulting Engineers response refers to:

The outline CEMP, and that details such as crane fixing and oversailing will form part of the Contractor's CEMP, to be agreed with DCC.

Re site investigations – a third party visited the site to retrieve samples, the findings of which had not been finalised at the time of lodgement. Rock blasting is not permitted as part of works taking place within their specification and the site investigation states that rock removal is not required.

Set back distances – secant piled wall at basement level in the drainage drawings 1.2m from boundary, serious implications in terms of undermining foundations, dewatering and destabilising property - secant pile wall solutions to basement construction is extremely common and is used to mitigate any risk to neighbouring properties with regard to any potential undermining or destabilising of structure. Specialist contractors have extensive experience. The proposed basement footprint has been set back from the existing trees to the rear of 98 Merrion Road. The detailing of this area will be reviewed further at construction stage.

Flood risk and SuDS – the flood Risk Assessment indicates that the lands are in Flood Zone C, in addition the lands were reviewed against historical flooding events future flooding from pluvial/fluvial/groundwater & infrastructural failures. Recent flood events of the Dodder at Ballsbridge (1986, 2002 and 2011) did not affect or reach the site, prior to the installation of the now operational flood defences. The flood defences, further reduce the likelihood of being affected by flood waters.

Flood defences and SuDS - the reference to the updated report of M Hamm and failure to comply with SuDS, that the attenuation if of no benefit as it is located below the 30 and 100 year flood event - SuDS requirements will be met through the provision of a green roof system, the application of low water usage appliances, a rain water storage unit for reuse and an attenuation tank to reduce storm water run-off during extreme storm events. It is not possible to incorporate soakway infrastructure in inner city sites of less than 0.2ha. The attenuation tank has been sized for a 1 in 100 year event + 20% for climate change. All storm water generated will be directed into the storage tank and released at a controlled rate; there will be no peak increase of overall volume entering the combined drainage system.

Re the statement in relation to history of flooding – the site is in zone ‘C’. The historic information in the submission was reviewed as part of the application and did not indicate historical flooding at the subject site. None of the historic events affected the subject site. Flood defence works have been completed. The maps included by the appellant are unclear and not annotated, so the location of the subject lands in relation to the flooding is unclear.

The proposed use of a basement, with an access level higher than the road level, would not constitute an unacceptable risk due to flooding.

By limiting the storm water outflow during extreme storm events, downstream infrastructure will have increased capacity.

Traffic & Transportation – per TRICS only 6 vehicular trips will be generated in each peak hour or 0.3% of peak hour traffic. The single entrance will reduce the confusion with two entrances. The access will be staggered 10m from the British Embassy access, removing any conflict. It will be constructed with the public footpath continued at a raised level across the site entrance/exit but ramped and dropped to facilitate car entry/exit. Measures such as signage will be implemented within the site to ensure that drivers entering and leaving are aware that pedestrians/cyclists have priority across the site entrance and that vehicles must yield right of way.

Excessive car parking provision – there is no on-street parking available along Merrion Road in the vicinity of the development site.

Insufficient forecourt – the surface level hardstanding area is more than adequate to accommodate the set-down of cars/delivery vehicles as indicated on the swept path drawings,

Waste Management – the management company will bring the refuse bins to surface level for on-street collection and return them to the storage facilities on collection. They will not be left standing on the public road or footpath.

Re existing ground not suitable for basement construction – any material excavated to form the basement will be removed from site in accordance with current guidelines and regulations. The foundation solution will be designed to comply with the soil conditions encountered.

6.2.5. JV Tierney & Company Consulting Engineers response re Daylight & Sunlight:

100 Merrion Road each of the windows highlighted that fall below criteria belong to rooms which are served by multiple windows. While the windows fall below criteria on one façade, the assessed rooms are seen to still be able to achieve high levels of daylight using the Average Daylight Factor calculation. The levels of daylight achieved in these rooms is well in excess (2.1% to 5.7%) of the requirements of BS8206-2 Code of Practice for Daylighting. Which states minimum values of ADF of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Of the windows which fall below the criteria, 3 of them are bedrooms which are seen as less important.

The garden area has been assessed based on the gardens full depth as this is what currently exists on site, and not carried out based on any future eventualities.

94 Merrion Road – based on a site visit 12/02/2018 it was noted that window no. 3 serves an existing kitchen located in the main house, rather than a bedroom. Kitchens do not serve as a private amenity space. Bedroom 3 was noted as a bedroom while the occupant noted that it was also used for painting and music. A number of additional windows highlighted by the appellants have been assessed for skylight and have demonstrated that the proposed development will have no effect on them as the proposed development does not face these windows.

102A Shrewsbury – there is a separation distance is approx. 46m, no impacts will occur.

94 Merrion Road – shortcomings in Chris Shakleton's report are referred to. The images and 3D model from his report would suggest that the plastic corrugated roof has been excluded from his calculations and does not reflect the on-site position.

Re windows 3, x1, x3, x4, x6 and x7, which are stated to fail to meet minimum skylight requirements, the report clearly states that x7 meets the criteria, 3 serves a circulation space and therefore does not need to be analysed, x1 has met the relevant criteria, x3 cannot accurately be assessed as it is covered with a plastic corrugated roof, x4 cannot accurately be assessed as it is covered with a plastic corrugated roof, x6 serves a kitchen which is served by other windows which exceed the criteria. This window is part of a new structure which appears to have been carried out as exempted development which was added subsequent to their original daylight/sunlight report. The assessment was carried out under a worst case

scenario and does not take into consideration the extreme variability in sky luminance due to changing weather conditions and changing seasons.

The Chris Shakleton report states that the garden area is in compliance with the BRE guide.

All windows assessed for sunlight have met the criteria. The Chris Shakleton report highlights one failure, however as this window is not within 90° of due south it does not need to be assessed.

It should be noted that the guide gives advice. It should not be seen as an instrument of planning policy.

Diagrams are presented for shadow cast on No 94 for September at 12.00, December at 12.00 and March at 12.00 and it is stated that there is no difference between the proposed and existing scenario and that the sunlight will not be totally eliminated from September to March.

6.3. Planning Authority Response

6.3.1. The Planning Authority has not responded to the grounds of appeal.

6.4. Observations

6.4.1. An observation on the appeal has been received from An Taisce, the observation includes:

- Inadequate and flawed planning report.
- Z2 zoning incorrect and reference to plot ratio. Development should be required improve residential amenities.
- Section 16.10 of the development plan ‘the provision and protection of residential amenities is a primary concern of Dublin City Council.’
- The diminution of residential amenity has been set out, particularly the degree to which these properties would be overshadowed. There should be no injurious impact.

- 16.10.2. 'Privacy is an important element of residential amenity, and contributes towards the sense of security', this has not been given due consideration.
- Demolition – the option of retaining and retrofitting the building was not given due consideration as required by the development plan – 16.2.1; 'the re-use of existing buildings should always be considered as a first option in preference to demolition and newbuild'; and 16.2.1.2 'to minimise the waste embodied energy in existing structures, the re-use of existing buildings should always be considered as a first option in preference to demolition and new-build.'
- Quality Housing QH7 – the character of the surrounding area has been disregarded.
- Design has failed to provide quality, per development plan 16.2.1 and 16.2.1.1 regarding design and quality. It has failed to respond to the existing context and is highly unsuitable to the wider land use character of the area and its relationship with the public realm is negative – two storey pitched roofs, set back from the road, brick and stucco. Both No 100 and 31-33 were successfully converted to apartments in the relatively recent past, significantly increasing the residential density and retaining facades with the design responding to the context.
- The buildings with white render and elements of brick detailing and timber windows are actually Arts-and-Crafts dwellings dating from the turn of the 20th century, many of which retain significant original features and are important in the domestic architectural history of Ballsbridge. While there are few Georgian buildings in the immediate area, a clear chronology of development can be traced from the fine 19th century Victorian dwellings of Raglan, Elgin and Clyde Roads through Merrion Road as far as Sandymount Ave. Around the turn of the 20th century development moved further along Merrion Road with the construction of the Arts-and-Crafts dwellings opposite the Masonic School, now the Clayton Hotel, to the Edwardian homes further down at Shrewsbury Road. The neo-Tudor plaster and timber motif of the Arts-and-

Crafts dwellings is evident throughout Ballsbridge including within the grounds of the RDS.

- Streetscape – 16.2.1 – bringing the building line forward by 11m and an additional 2.6m for balconies breaks the existing pattern, where there is a gradual increase in set-back along Merrion Road from the corner of Sandymount Ave to Merlyn Road, would be incongruous and overbearing.
- Infill – development plan 16.10.10 and QH 8 – the development does not fulfil the requirements.
- Public Open Space – development plan 16.10.3 - 10% required, none provided. There is provision for the payment of a contribution in lieu.
- Gated development – QH10 is contravened.
- There is no financial provision for the enhancement of open space.
- Re the loss of the tree which is part of a row of mature trees along Merrion Row and balances a similar row on the opposite side, it is unlikely that it could be re-located. An Taisce oppose the loss of the tree along this heavily trafficked area where it has been shown that a continuous row of trees can remove up to 60% of the air pollution on city streets. Development Plan 16.3.3 - 'the design of vehicular entrances that impact on adjacent trees will need to be considered to avoid conflicts with street trees.' Where a conflict is unavoidable a financial contribution will be required. In this instance the conflict is avoidable.
- The Rexdon apartment development on Sandymount Ave has been referenced as a precedent. This never came before An Bord Pleanála, due to missing the deadline. As a result of this overdevelopment there has been a significant diminution in the residential amenities of neighbouring properties.
- Density – in the development plan at 16.4 and in national policy a density of 50 per ha is recommended, this is significantly higher. 'All proposals for higher densities must demonstrate how the proposal contributes to place-making and the identity of an area, as well as the provision of community facilities and/or social infrastructure to facilitate the creation of sustainable neighbourhoods.' It

fails to contribute to the identity of the area and does not provide community facilities.

- Height – Low-rise - the definition relates to the prevailing local height and context. The proposal does not relate.

6.5. Further Responses

- 6.5.1. Third party response by Margaret Reid to other third party grounds of appeal, supporting the grounds in other third party appeals.

Their third party property is the nearest and most affected. Points already made are reiterated.

- 6.5.2. Third party response Fionán & Nuala Clifford to other third party grounds of appeal, agreeing with the submissions and stating that a representative from JV Tierney & Co visited their house to see its layout and the single storey return and should be able to confirm that their previous submission was correct.

- 6.5.3. Margaret Reid (Reid Associates on behalf of) has responded to the first party response to the grounds of appeal, which includes:

While there are issues in common in the third party appeals there is not a high degree of commonality and the approach adopted in the response fails to address key issues.

The response to the misleading information is to state that the boundaries of the site are not square and may vary. The secant piled wall at basement level is 1.2m from the third party's boundary.

The residential use which has been characterised as a guest house – they note that their design was predicated on a less sensitive receptor and they have not mitigated their design approach.

The street tree – they note this will be removed although there is no legal right to do so.

The statement that the design is based on a pavilion in a landscaped garden – this approach is unsustainable within an urban streetscape context where there are

established building lines and neighbouring residences and is premised on a greenfield site context.

Impact on residential amenity – they have failed to consider this as a design modifier.

The response contests the references to national policy stating that the development fails the national guidance for increased residential density in relation to the need for:

- Acceptable building heights;
- Avoidance of overlooking and overshadowing;
- Particular sensitivity required in relation to the design and location of apartment blocks which are higher than existing adjacent residential development.

It fails to avoid significant material impact on the amenities of adjacent residential housing.

Points already made are reiterated in relation to density, scale, height, massing and overlooking. In relation to the latter it states that the pavilion block extends 53m along the third party property over five floors which exacerbates overlooking problems despite opaque glazing to bathroom windows and timber slats to external terraces, which do not prevent noise and disturbance coming down at the third party from a higher level. The wall of development including terraces would cumulatively diminish the amenity of the garden. The terraces located at the front would enable people on the terraces to look back directly into the third party dwelling.

Points already made in relation to development character / visual amenity are reiterated.

Demolition – the demolition has not been justified in either policy or sustainability terms. Other points made in relation to the importance of the existing house are reiterated.

Traffic/access parking - Points already made are reiterated. The applicant has no legal consent to remove the street tree. Re the use of TRICS data they have failed to differentiate the type of apartment complex which comprises significantly large units and significantly greater parking provision than the norm, which implies greater reliance on car as a mode of transport. Reference to percentage volume is a means of describing traffic so as to diminish its significance by reference to a larger overall number. There is extensive queuing on the road during peak period and this issue is

not addressed. Ms Mulcrone, who prepared the response, has noted on her site visit the difficulty of taxi access to and from the guesthouse, and conflicting traffic movements, and has witnessed a traffic accident at this location, and notes a history of traffic accidents at this section of road.

Ground conditions not suitable for basement – the CS Consulting report merely addresses this issue as a problem for the subject site. It makes no reference to the adverse impact on the third party property. Potential subsidence issues have not been addressed in terms of preventative measures or schedule of dilapidations or mitigation. This issue should have been addressed at the outset.

It is not sustainable to reserve these issues over as matters of construction design where there is a real and significant risk to the structural integrity of the third party property. The MT Hamm report attached is referred to. No 96 Merrion Road is more than 100 years old and would be regarded as a fragile structure, with foundations at a much higher level than the proposed building. Site investigations adjacent to the site indicate poor/filled ground of 6m below ground level. The adjoining building will result in an excavation to this depth and will have a negative effect on the structure of No 96.

Construction management – these issues have not been addressed. It is unreasonable to reserve these as matters for agreement excluding the third party from issues which directly affect her use of her property and enjoyment of her garden.

SuDS – the issues raised have not been addressed. Points already made are reiterated.

Flood risk – the desktop study of flood risk is insufficient. It is not a site-specific flood risk assessment. The Merrion Road Culvert mentioned in the engineer's report, is not assessed for surcharge or for flooding in the application. Flood defences downstream may have the effect of raising the flood level in the area of the site. It is neither appropriate nor feasible to require a SSFRA as a condition when it is a necessary input to access whether the development should be granted or not. The substantive flood risk issues have not been addressed.

Daylight and Sunlight – the Daylight and Sunlight report is not an objective independent assessment. Third parties are at a disadvantage and not in as favourable a position as the applicant to undertake such assessment given the

limited time frame and the complex modelling of such a large development. They are dependent on the Board to independently vindicate their case.

The standards and criteria refer to minimum requirements. Five windows go from high amenity levels to failing the minimum criteria. The key issue from an amenity context is the scale of the overall real reduction in sunlight or daylight to five rooms so that they fail even the minimum criteria. The visible sky component to the kitchen x6 amounts to a 55% real reduction, the reduction to the kitchen is x6 56%, the living room x4 is 52%, to the bedroom x1 is 33%, and to the living room 3 is 42%, which amounts to a staggering and unreasonable impact on No 96, a property in a leafy Ballsbridge suburb, not a tight inner urban site, and not subject to the flexibility suggested in the report.

The attempt to reclassify the use of the third party's home is disingenuous. Window 3 is to a main amenity habitable space and the corrugated roof was a temporary measure which has been removed.

Similarly the approach to the garden it to diminish the perception to the Board of the extent of the impact.

The Shakleton report conclusions highlight that the impact on No. 96 is such that it fails the BRE requirements with respect to impact on daylight and sunlight.

6.5.4. The Shakleton response includes:

Responding to the JVTE¹ response to the grounds of appeal:

Windows 3, x3, x4 (JVTE 5, 6, 7) ground floor, remain untested. The failure of the ground floor kitchen side window x 6 (JVTE 9) is accepted and severe.

There is a variance between the two reports for the upper bedroom x1 (JVTE 1) with the computed results straddling the pass result but there is still a 30% reduction to this highest window.

The JVTE report seeks to limit the application of the guidelines in this case. This infill development into a mature residential area does not constitute the special circumstances referred to in the BRE guidance. Rather the guidance states 'alternatively where natural light is of special importance in a building, less

¹ JVTE refers to JV Tierney and hence JVT numbering refers to the numbering of windows in that report.

obstruction and hence more sunlight and daylight may be deemed necessary.’ They suggest that light has a particular importance for this Arts & Crafts style house and less rather than more obstruction is called for.

Re refusal of access – the reason for the access request was not given. The report does not address the check requirements of clause 2.2.8 ‘no skyline check’ for rooms they did not have access to and for which room layouts is known.

The guidelines specifically warn against using ADF to check the impact on existing rooms, which tends to penalise well-daylit existing buildings, where such a reduction in light would still constitute a loss of amenity to the room.

The JVTE report seeks to devalue the importance of light to bedrooms and kitchens in relation to VSC results. The clause quoted is in relation to sunlight where the guidelines actually warn against blocking too much sun even to rooms of this classification.

They accept corrections related to late renaming of windows.

While the JVTE report accepts that windows have been omitted they do not examine those most impacted: the ground floor living room served by JVT 6/7 CSC² x3/x4 and the main window JVT 5 CSC 3 on the landing which provides light to the rear of the main central reception as well as to the landing.

Re plastic corrugated roof covering x3 and x4 and that they cannot be accurately assessed, there is a temporary clear plastic roof covering some of the ground floor facing windows. It bisects one with part above and part below. These two windows service a ground floor living space and provide excellent natural light skylight and sunlight. They are the only source of natural light to the room. The JVTE report fails to provide any alternative analysis or give any consideration to the neighbouring property in this regard. Some windows not previously included have been assessed but not identified graphically. The most impacted windows have not been assessed. The CSC response, window by window, is set out in tabular form and with details stated.

² CSC refers to Chris Shakleton Consulting and hence CSC numbering of windows refers to the numbering of windows in that report, with the equivalent JVT numbering given were applicable.

For window 1 the values are comparable, borderline pass (27%) but representing a drop of 30%. If this, the highest window is diminished by 30% all windows below will clearly be impacted beyond what is acceptable.

Windows 6 & 7 – not assessed because they are covered with a plastic corrugated roof. They are partly covered by a clear transparent polycarbonate covering. The structure is temporary and the impact to a very small degree to the skylight and daylight above. CSC have ignored the transparent temporary structure and the results as expected show the considerable impact on these windows.

Windows 9 & 10 relate to the kitchen extension (x6 and x 7 of CSC numbering) both analysis show that the window facing the proposed development fails badly to meet the BRE requirements. The JVTE report indicates that other windows exceeding the criteria serve this kitchen, but this does not remove the requirement to assess same. The window provides light to the top end of the kitchen. Dropping the skylight levels by approx. 60% will impact the light levels, ADF and light consistence along with access of light to the working plane. No 'no skyline' test was assessed.

Window 3 is stated to serve as a circulation space and not analysed. Window 3 is a large stained glass window into the central reception, oversized to light the largest room in the house, without which the room would be greatly diminished.

Sunlight to the south-east windows meets the minimum requirements, but the reduction in sunlight is very considerable and greater than 50% of what it has currently.

Re sunlight to window x7 which they state doesn't require assessment. Figure 27 of the BRE document is referred to in relation to the need to assess this window. They accept that this window passes the requirements.

They refer to the alternative garden strategy shadow impact and state that the garden is distinctly set out into separate parts. The sunny space near the house in grass and flower beds while that at the end of the garden is covered with woodland planting; and clause H, H4.2 is cited in this regard. The impact of the development would be to put the sunny part of the garden into shade.

While felling the trees at the bottom of the garden and major re-landscaping might open the garden to utilise remaining potential sunlight they believe that it is unfair to expect residential neighbours to go to this expense to facilitate a commercial

development especially when their access to sunlight and skylight is challenged in so many other ways.

6.5.5. The MT Hamm response includes:

Reducing the site level by constructing a basement brings the site into the flood risk category and a site specific flood risk assessment should be carried out.

Flooding has been recorded in the area.

SuDS is not being met. The green roof system will not reduce the surface water run-off from the development, it will only have the effect of reducing the peak flow for certain short duration storm events. Critical events (30 / 100 year) will not be affected because the green roof will be saturated and not capable of attenuating the flow.

The site is more than 0.2ha and the development plan requirements do apply.

Relying on storage below the flood level is not feasible.

Increasing the impermeable area will increase the volume of surface water generated. Attenuating this is a process of retaining it on site for a time period and will not reduce the volume being discharged to the combined foul/surface water pipe network.

Flood risk is exacerbated by lowering the site level to provide a basement and by connecting this basement and the site foul and surface water system to the combined sewer flowing through the flood plain immediately north of the site. Water from the network can now flood the proposed site with potential damaging effects to both the proposed development and adjoining properties.

This application proposes to connect the proposed development to flood record areas on Merrion Road.

Currently the site is without a basement, the applicant has not demonstrated that the proposed basement will not be liable to flooding for either the 30 year event or the 100 year event. A site specific flood risk assessment would demonstrate this.

SuDS philosophy has two very clear requirements: control peak volume and not increase volume. The applicant has conceded that they can only control peak flow and cannot meet SuDS requirements.

6.5.6. Bluett & O'Donoghue Architects have responded on behalf of Anne O'Reilly, to the applicant's response to the grounds of appeal, the response includes:

Concerns in relation to the impact on her property and that the failure of the Daylight & Sunlight report to fully assess all of the possible impacts raised by appellants undermines its thoroughness and credibility.

The introduction of windows and upper floors on the south-east façade will lead to erosion of her privacy.

Precedent in relation to scale and density.

The use by JV Tierney in the Daylight & Sunlight report of the guidelines for apartment developments in urban areas: Urban Design Manual, A Best Practice Guide, UK, 2009; Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, Department of Housing, Planning and Local Government 2018. The site is not in a central urban area. The JV Tierney report is clearly intended for central urban areas. The third parties concerns are echoed by An Taisce's submission which highlights the Z1 zoning 'to protect and improve residential amenities'.

This is not an 'infill apartment scheme'. It is not a detached pavilion in a landscaped garden. It is substantial overdevelopment for which there is no precedent in the area. The suggestion that the massing will be reduced through the introduction of generous balconies is contradictory; they add to the impact on existing residents of neighbouring buildings by excessive scale, overshadowing and overlooking.

6.5.7. Timothy O'Donovan has responded to the applicant's response to the grounds of appeal, the response includes:

He is not convinced that the proposed development does not constitute overdevelopment. He considers that a reasonable compromise would be 86 units per ha. The proposed height is excessive and the proposed building is so close to Merrion Road and the development is mid street. This would result in the removal of the fifth floor which only contains one apartment.

6.5.8. Fionán & Nuala Clifford have responded, to the applicant's response to the grounds of appeal, the response includes:

The response refers to guidelines but not to neighbouring properties.

An increase of between 45% and 80% in height would damage the streetscape/skyline.

Overlooking of their property including their garden space by windows: stairwell, balcony doors and side screens; 58m of balcony terrace railings. The third floor windows would have clear glazing. The proposed vertical slats would help the occupants overlook without being overlooked. An Bord Pleanála required the third parties, 11 years ago to provide a boundary fence of 1800mm to protect the privacy of the neighbour.

Gross invasion of privacy and should not be granted.

Points previously made in relation to daylight/sunlight are reiterated and photographs supplied.

The proposed building line would create a bulky end to the building. The bulky overbearing and monolithic design is not in keeping with other dwellings on this side of the road.

A website address is given which they state shows the fine property at No 98 which fits into the streetscape.

7.0 Oral Hearing Request

- 7.1. One of the appellants requested an Oral Hearing but the Board decided to determine the appeal through written submission.

8.0 Assessment

- 8.1.1. The issues which arise in relation to this appeal are: appropriate assessment, principle of the development, impact on the character of the area, impact on residential amenities, the standard of development, impact on adjoining property, traffic safety, flood risk, trees/public open space and other issues and the following assessment is dealt with under those headings.

8.2. **Appropriate Assessment**

- 8.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

8.3. **Principle of the Development**

The site is in an area zoned Z 1 with the objective to protect, provide and improve residential amenities.

The observation points out that in this zoning development should be required improve residential amenities, and that per section 16.10 of the development plan 'the provision and protection of residential amenities is a primary concern of Dublin City Council.'

The development plan also considers the benefits of building at higher densities which makes more efficient use of land and energy resources, creating a consolidated urban form which fosters the development of compact neighbourhoods and a critical mass, and contributes to the viability of economic, social, and transport infrastructure. The protection of existing residential amenities and the promotion of higher density is reconciled in policy QH7 which promotes residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

Building height, site coverage, plot ratio standards are cited by both sides in opposition to and in support of the proposal. In my opinion these are not issues by which the development stands or falls.

The proposed development is acceptable in principle. Issues regarding impact on residential amenities are dealt with under a separate heading.

8.4. Impact on the Character of the Area

The proposed development will alter the character of the area. As viewed from Merrion Road, the existing two storey dwelling of traditional appearance with slated hipped roof, set well back from all boundaries will be replaced by a modern building of five storeys extending much closer to all boundaries. The set back from the road, which is currently similar to that of the apartment block to the south east, will now be similar to the buildings to the north west. This bringing forward of the building line, together with the increase in scale, will increase its prominence in the street and will heighten the contrast in scale between the proposed building and those adjoining, particularly the pair of Edwardian buildings to the north-west, with which it will be compared.

The alteration to the character of the area, which will arise from the increase in depth of the proposed development, has been raised in many of the third party appeals and in the observation. The pattern of development in the area is development that addresses Merrion Road with generous set-backs from boundaries and extensive gardens to the rear. The proposed development will utilise the extensive grounds with in-depth development and this is an alteration in the character of the area.

It is pointed out that this side of Merrion Road and the opposite side differ in the pattern of development, with this side being more consistent in its suburban, residential character.

There is considerable consistency in the existing development, which, apart from the apartment blocks at the junction of Sandymount Avenue and Merrion Road, a context which third parties state is not replicated in the subject site, is characterised largely by two storey buildings set within their own grounds. However, apart from what is described in some of the submissions as its leafy suburban character, there is no uniformity of building style which requires conformity in new development and no designation of the area as a characterful area which should be protected from change. In my opinion impact on the character of the area should not be a reason to refuse permission.

8.5. Impact on Residential Amenities

8.5.1. There is considerable concern from adjoining and adjacent property owners about the impact on residential amenities in terms of overshadowing, overlooking, overbearing impact and noise.

8.5.2. Overshadowing

8.5.3. Overshadowing can be considered under the headings of daylight and sunlight.

8.5.4. Daylight

The issue of overshadowing has been examined by a specialist consultant for the first party in the application submissions and in response to the grounds of appeal. It has also been examined by a specialist consultant on behalf of one of the third parties, the party living immediately to the north-west.

The report from the first party's consultant points to the guidance nature of the document used in the analysis and states that there may inevitably be some element of overshadowing which must be weighed against the overall quality of the design and layout, measures taken to avoid overshadowing, the location of the site and the need to ensure an appropriate scale of urban development.

There is considerable conflict in the evidence of the specialist consultants with regard to the extent of the overshadowing and the value to be attributed to the overshadowing impact.

JV Tierney & Co have prepared a Daylight & Sunlight Report for the first party and state that calculations have been carried out for both the proposed and existing development to ensure that there will be no noticeable loss of light.

They have carried out tests using the BRE guidance document 'Site Planning for Daylight and Sunlight, A Good Practice Guide' using Vertical Sky Component – VSC and Average Daylight Factor (ADF) measurements. The report states that all relevant windows of the existing surrounding houses were measured and the majority of spaces assessed meet the relevant criteria. Table 10 A Light from the Sky Method 1, indicates the VSC existing and proposed, of those windows which meet the criteria, with the target set at 27% or 0.8 of existing.

Table 10 A Light from the Sky Method 2, indicates the ADF, target ADF and proposed, of the 6 windows measured, (apparently selected based on their failure to meet the VSC criteria) which all meet the criteria of 1% 1.5% or 2% (the percentage based on their function).

Chris Shakleton Consulting (CSC), reviewed of the sunlight/daylight report and assessment on behalf of Margaret Reid No 96 Merrion Road and the review was presented with the grounds of appeal. His review pointed out the many windows which were not included in the assessment, either for skylight or for sunlight, to which he gives a number with a prefix x (for extra). The CSC report states that VSC is the measure to be used to examine impact on adjoining properties and that ADF is only for use in relation to daylight within the proposed development; and also notes that the impact on 'no skyline' of adjoining property was not assessed. The modelling carried out finds that windows facing the proposed development show marked drops in available skylight both below the 27% guidance value and well below the change ratio of 0.8; five windows thus measured fail.

In the first party's response to the grounds of appeal a daylight & sunlight response by JV Tierney & Co includes a response to the Chris Shakleton Consulting review in relation to No 96 Merrion Road, which includes: some of the windows identified within Chris Shakleton's report are extensively covered by an existing corrugated plastic roof which was confirmed by a site visit. Correct analysis of these windows is not possible with the plastic corrugated roof in place. The images of the 3D model from Chris Shakleton's report would suggest that this plastic corrugated roof has been excluded from his calculations and as such does not reflect the on-site position: x3 and x4 being the windows in question. Window 3 serves a circulation space and therefore does not need to be analysed; x1 has met the relevant criteria; and x6 serves a kitchen which is served by other windows which exceed the criteria.

In a further response on behalf of Margaret Reid No 96 Merrion Road, Chris Shakleton Consulting (CSC), state that windows 3, x3, x4 (JVTE 5, 6, 7) ground floor, remain untested. The failure of the ground floor kitchen side window x 6 (JVTE 9) is accepted and severe. There is a variance between the two reports for the upper bedroom x1 (JVTE 1) with the computed results straddling the pass result but is still a 30% reduction to this highest window. Window 1 has been analysed in the response to the grounds of appeal and a VSC of 27.6% has been derived. The

further third party response acknowledges that the difference of 1.8% indicates a pass value, noting that this represents a drop of 30% to a long narrow bedroom whose only source of light is this window; and also noting that this is the highest window in this façade. It is apparent that there will be loss of daylight to existing windows in No 96 which exceed the guidance limits.

I am unable to accept that the windows at ground floor level should not be assessed because part of the area outside the windows has a transparent roof in place. The impact on light to these windows will exceed guidance limits. Nor do I accept that the light to window 3 which lights an open stairs and feature window within a living area, does not require analysis because in part it serves a stairs. As presented, the loss of light to this window exceeds guidance limits. The claims that the impact on windows Nos 9 & 10 is not of concern since there are other windows lighting this room has not been supported by the necessary evidence as to the quality of light existing and remaining post development.

In relation to No 100 Merrion Road reductions in VSC for windows numbered 1, 7 and 8 which currently meet the 27% criteria (at 28.71%, 33.83% and 30.67%) are noted in the JV Tierney & Co Daylight & Sunlight Report, with the VSC reducing to 18.28%, 23.11 % and 20.44% respectively (representing reductions of 36%, 31% and 33.35%). In the case of windows 1 and 8 the report justifies these reductions by using the ADF (no 7 is omitted from further analysis for no stated reason). The two windows meet the criteria of 1.5% (the percentage is based on their function). It is apparent that there will be loss of daylight to existing windows in No 100 which exceed the guidance limits. The use of the ADF criteria is not supported by detailed information and its use has not been justified in this case.

In relation to No 94 Merrion Road reductions in VSC for windows numbered 3, 4, 5, 6, 7 and 8 which currently meet the 27% criteria are noted in the JV Tierney & Co Daylight & Sunlight Report, with reductions to the VSC to below 27%, but except in the case of window 8, meeting the change ratio of 0.8. Window 8 in its existing state is below the 27% criteria.

It appears that other properties are not likely to be affected.

In my opinion there will be a significant adverse impact on daylight to existing adjoining buildings which is not justified by particular requirements for the

development proposed or by particular benefits which would be gained from the development such as to override the significant impacts on adjoining residential property, and this is a reason to refuse permission.

8.5.5. Sunlight

Sunlight to windows is considered in the JV Tierney & Co Report on Daylight & Sunlight prepared for the first party.

Windows considered are those to No 94 Merrion Road and to two dwellings in Shrewsbury.

The Annual Probable Sunlight Hours (APSH) existing and proposed are measured against target values of 25% annual and 5% winter. In the case of 94 Merrion Road, bedroom window 3, living room window 4 and bedroom window 8, which currently receive sunlight in excess of criteria levels, fail to achieve the minimum levels post development. The loss to the bedrooms is justified on the basis of the use of the rooms as bedrooms which are less important, and that to the living room on the basis that it is the winter condition and that it exceeds the threshold annually.

In the grounds of appeal the owners of No 94 contest the statement that the use of the rooms is as bedrooms. They state that the return wall and roof (where there is a roof window) is shown bathed in sunlight in figure 14 of the analysis at 8 am on the 21st March and until 1.00pm, and this continues from the autumn equinox to spring, but will be totally eliminated for this period, as shown in Figure 15, post development..

No windows to No 96 Merrion Road were included in the analysis. In their grounds of appeal a sunlight analysis of windows to 96 Merrion Road was carried out by Chris Shakleton Consulting (CSC), and indicates significant loss of sunlight to window x7 which apparently did not exist when the application documents were being prepared; where the existing value of 20.1% already below the criteria level reduces to 15.5% a change to 0.78 of the existing annual level.

Sunlight to amenity areas is considered in the JV Tierney & Co Report. The total garden area in m², the area receiving more than 2 hours sunlight in m², and the % of garden receiving more than 2 hours sunlight (the criteria being that at least 50% of the garden area will receive more than 2 hours sunlight during the equinox 21st

March) are set out in table 11 B, for house Nos 94, 96 and 100 Merrion Road and Nos 66 and 66A Shrewsbury. All of the gardens are stated to meet the criteria.

In the grounds of appeal the owners of No 100 Merrion Road state that the use of the entire grounds around the building is inappropriate. It states that permission for the 9 apartments was granted on an area of 0.16ha/1643 sq m. and that only this area should be assessed and not the entire garden. The area assessed is 1350m². The argument that only the outdoor amenity which is part of the planning unit should be assessed is of interest but It is worth noting that the assessment of sunlight impact indicates that 100% of the garden area will receive more than 2 hours sunlight during the equinox 21st March so the point is moot.

The grounds in relation to No 96 Merrion Road states that the amenity area impacted is that which is adjacent to the rear of the dwelling and actively used as an outdoor space and that the area which is not impacted is shaded by trees within the grounds. Based on a visit to the site I can confirm that this is the situation, however the criteria in relation to amenity space is met.

It appears that other properties are not likely to be affected.

In my opinion there will be a significant adverse impact on sunlight to existing windows in adjoining residential development which is not justified by particular requirements for the development proposed or by particular benefits which would be gained from the development, such as to override the significant impacts on adjoining residential property, and this is a reason to refuse permission.

8.5.6. Overlooking

There is considerable concern from adjoining residents about the impact from overlooking, and one third party is particularly concerned about the precedent such development would have for similar development to the rear of other properties on Merrion Road.

The existing development on the site comprises an older building to the front with windows at first floor facing north-east and south-west and a three storey extension with windows facing north-east. The proposed development will extend closer to the boundaries, will extend over five floors and in addition to windows facing in every direction will have terraces serving the 20 apartments on every elevation.

Measures to obviate overlooking in the design of windows and in the provision of partial screening on balconies is incorporated at first and second floor levels; at third and fourth floors the balconies appear to be enclosed by frosted glass panels with metal guard rails above, although not of sufficient height to function as an overlooking obviation measure. The notation on the drawings is not entirely clear but the details are amenable to condition. I note the concerns of the owner of No 96 regarding potential overlooking from the front balconies where no screening is indicated.

The potential for overlooking is an important consideration but in my opinion it is one which can be satisfactorily resolved and should not therefore be a reason to refuse permission.

8.5.7. Overbearing

The overbearing impact of the proposed development is of concern to third parties and is a consideration particularly for those closest to the site. The relative bulk viewed from the north-west can be seen by comparing the existing elevation on drawing A-PA101 Rev 0 elevation 5 with the proposed west elevation 05 on drawing A-PA105 Rev 0. The increase in bulk as viewed from this direction is very considerable. From the south-east the change can be seen by comparing the existing elevation on drawing A-PA101 Rev 0 elevation 4 with the proposed west elevation 04 on drawing A-PA105 Rev 0. The increase in bulk as viewed from this direction is also very considerable. I acknowledge that in order to achieve the goal of building at higher densities and the benefits which making more efficient use of land achieve, a significant increase in bulk would be required. In this case, on balance, I consider that the resultant overbearing impact on the adjoining properties is excessive and that this should be a reason to refuse permission.

8.5.8. Noise

Impact from noise during the operational phase of the proposed development is of concern to third parties, particularly for those closest to the site. It is of concern that the increased activity arising from the occupation of 20 apartments, with new paths

along site boundaries and outdoor terraces on each floor above ground level, will generate a noise nuisance.

The existing use as a guesthouse has the potential to generate noise. Merrion Road is not a quiet area. Even in rear gardens the sound of traffic and other road uses can be heard. The proposed residential use is not a noted noise generator. In my opinion noise should not be a reason to refuse permission.

8.6. The Standard of Development

8.6.1. No issue has been raised regarding the standard of accommodation of the proposed apartments. Each apartment is generously proportioned, provided with adequate storage and with adequate outdoor private amenity space.

8.6.2. Car Parking

Third parties and the observer have concerns in relation to the proposed car parking. It is stated that the demolition is driven by the demand for car parking; implies greater reliance on car as a mode of transport; the applicant has proposed and justified the height of the proposed development on the basis of proximity to public transport and yet the entirety of the traffic assessment and car parking design is premised on a car based solution which would generate car based commuting from the site which is contradictory, contrary to national policy to minimise demand for car based travel and contrary to the development plan car parking strategy and would undermine implementation of any mobility management strategy; that the parking exceeds development plan standards which is acceptable only in exceptional circumstances, per chapter 15 of the development plan; and that the location warrants limiting car parking.

The applicant's response is that there is no on-street parking available along Merrion Road in the vicinity of the development site.

Third parties and the observer have concerns in relation to the quantum of traffic turning movements and the contribution to existing congestion on Merrion Road.

The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2018) refers to car parking in apartment developments, stating:

The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria. In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. This would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity; locations most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations, 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.

The default policy in the subject location is for car parking provision to be minimised. In my opinion the quantum of parking proposed is in contravention of policy to reduce reliance on private cars and encourage more sustainable transport modes.

8.6.3. Cycle Parking

The New Apartments Guidelines also refers to cycle parking stating that an important context for the guidelines is likely significant population increase in cities and urban areas over the next two decades. The guidelines aim to secure wider Government policy to achieve more sustainable urban development that will enable more households to live closer to their places of work without the need for long commuter journeys and disruption of personal and family time; enabling citizens to more easily get around our cities and urban areas is a fundamental planning concern and maximising accessibility of apartment residents to public transport and other sustainable transport modes is a central theme of these guidelines.

Apartments within the subject site would provide residents with accessibility and a high degree of mobility, without the necessity for use of private cars and the provision of adequate cycle parking within the site is required so that the development aligned with public policy. A minimum standard of 1 cycle storage space per bedroom and a minimum of 1 space per 2 residential units for visitors, is required. In the subject development 49 spaces is the requirement and only 20 is being provided.

8.7. Impact on Adjoining Property

Impact on adjoining structures and property from site excavation, crane fixing and oversailing is of concern to their parties.

The third party adjoining to the north-west has concerns in relation to the potential adverse impact of the excavation for the basement and the provision of secant piles in proximity to structures on her property. There are concerns regarding the ground conditions, whether rock or soft conditions. A third party states that this entire area is a landfill site.

It is stated by the first party that testing of ground conditions was carried out. They confirm that tests carried show that rock breaking will not be required; the results obtained have not been given. The first part states that secant piles are used throughout the city and that specialist contractors are familiar with their use.

The third party adjoining to the north-west has concerns in relation to the use of a crane, its fixing and oversailing of her property

In my opinion, although the results of the site investigations have not been made available, there is no reason to consider that the development cannot be managed such that adjoining property is adequately protected. The CEMP is a suitable method of dealing with detailed excavation and construction procedures. In relation to other property protection issues these legal matters are not ones that the Board can determine being covered by other codes. Section 34 (13) of the Planning and Development Act, which states that the granting of permission does not entitle a

person to carry out development, covers the eventuality that the development cannot be implemented for legal reasons.

8.8. Traffic Safety

The issue of traffic safety has been raised by third parties and observer, in relation to the need to cross traffic lanes when accessing egressing the site in conflict with a bus stop and cycle lane. The proposed development has been examined by the Roads & Traffic Planning Division of Dublin City Council and found to be acceptable. The site is an urban site with existing access to the public road. In my opinion traffic safety should not be a reason to refuse permission.

8.9. Flood Risk

The issue of flood risk has been raised by third parties and observer, in relation to proximity to the River Dodder flood risk zone and the provision of a basement which brings the development into the flood zone; and also in relation to the proposed increase in built area increasing flooding impact.

The applicant response states that the SuDS measures will be implemented, including that all storm water generated will be directed into the storage tank and released at a controlled rate and there will be no peak increase of overall volume entering the combined drainage system.

It states that recent flood events of the Dodder at Ballsbridge (1986, 2002 and 2011) did not affect or reach the site prior to the installation of the now operational flood defences. The flood defences, further reduce the likelihood of being affected by flood waters.

The third party has provided an expert report by M Hamm which states that there is failure to comply with SuDS, that the attenuation if of no benefit as it is located below the 30 and 100 year flood event

In relation to the risk of the development flooding the applicant response is that the proposed use of a basement with an access level higher than the road level would not constitute an unacceptable risk due to flooding.

In my opinion the development of this brown field site with basement access higher than road level is acceptable and flood risk to the development should not be a reason to refuse permission.

In relation to SuDS and contributing to flood risk on adjoining lands, the Green Infrastructure Guiding Principles in Appendix 23 of the development plan state that applications for developments on large sites (0.2 hectares or over) should be accompanied by a range of proposed measures in relation to SuDS, including disposal on site and detention - holding water on a temporary basis. The proposal (on a site only marginally larger than 0.2ha (0.22ha)) includes detention but does not propose any disposal on site, however this is acceptable to the Engineering Department – Drainage Division and is not contrary to policy and should not be a reason to refuse permission.

8.10. Trees / Public Open Space

The loss of trees has been raised as a concern by third parties and the observer. The concern relates to the street tree which is located on the public footpath and will be directly impacted by the proposed vehicular access/egress location, and the large evergreen tree at the north-eastern corner of the site.

The application details propose retention of the tree at the north-eastern corner of the site as well as a line of silver birch along the north eastern boundary. The crown spread of the evergreen tree appears to extend above the proposed basement and it is therefore doubtful that this tree can be retained. It is not a protected tree and although its presence makes some contribution to the amenities of the area, it's potential loss should not be a reason to refuse permission.

The street tree is referred to in relation to the validity of the application, the legality of implementing the development, and the loss of amenity / compensatory provisions.

The street tree is located on the public footpath where it was provided by Dublin City Council and Dublin City Council can sanction its removal. The street tree was provided and has been maintained at public expense and should the Board be minded to grant permission, it is considered that a condition should be attached requiring the first party to either arrange the relocation of the subject tree to the

satisfaction of the Parks & Landscape Services Division of Dublin City Council if feasible, or fund its replacement; which should be carried out prior to the commencement of any other development on the site.

As is stated by third parties and observer, the proposed development does not make provision for public open space and the Dublin City Council Development Contribution Scheme includes a requirement that a contribution towards the provision of or improvements to a park and/or enhancement of amenities in the area in line with the City's Park Strategy, be paid in such circumstances. Should the Board be minded to grant permission, it is considered that such a condition should be attached.

8.11. Other Issues

Devaluation of property.

It is stated that the proposed development will devalue property. No evidence of such likelihood has been presented. This should not be a reason to refuse permission.

Demolition of the Existing Building

It is stated that the demolition of the existing building has not been justified, that its retention and adaptation is preferable and further that it is of social and historic interest, because of its association with CT Hafner, and should be retained.

The first party states that the existing construction and layout of the building would require major alterations to meet modern building regulations / heat energy ratings and modern spatial / living standards. The architect's opinion is that a remedial solution is not viable; and that apart from the name over the door the existing house does not include any features of interest to associate it with CT Hafner or his family's business; and the association is not of such significance to merit retention of the building.

The existing building is not a protected structure, its demolition would not involve a net loss of residential units and in my opinion the demolition should not be a reason to refuse permission.

9.0 Recommendation

- 9.1.1. In the light of the above assessment I recommend that planning permission be refused for the following reasons and considerations.

10.0 Reasons and Considerations

- 1 The proposed development would result in significant loss of daylight and sunlight and have an unacceptably overbearing impact on adjacent residential properties which is not justified by the exigencies of development of the site or by particular benefits which would be gained from its development and would accordingly be contrary to the proper planning and sustainable development of the area.
- 2 The excessive car parking provision proposed is contrary to national policy to minimise demand for car based travel, would contribute to congestion on public roads and would undermine the uptake and use of sustainable transport modes.

Planning Inspector

13 July 2018

Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022
- 3 Extracts from Dublin City Council Development Contribution Scheme 2016 - 2020
- 4 Extracts from Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2018