



An
Bord
Pleanála

Inspector's Report ABP-301187-18

Development

Permission for development for to consist of the provision of 1 building (with 2 and 3 storey portions) consisting of 2 no. ground floor commercial units and 8 no. 2 bed apartments and 3 no. 1 bed apartments with associated circulation spaces, private balconies, associated car parking, new vehicular entrance and all associated site development works. The proposed development is within the curtilage of a protected structure.

Location

Brookville, Ardee Road, Dundalk County Louth

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

17/164

Applicant(s)

Ardmore Enterprises Ltd.

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal	Third Party
Appellant(s)	1. Derek Williams 2. Paul McCullins
Observer(s)	None
Date of Site Inspection	21 st September 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.7 ha, is located along a roadway off the Ardee Road (R171) to the south west of Dundalk Town Centre. The southern part of the site currently comprises a disused car park, while the northern part of the site, which is heavily planted, comprises part of the private amenity space formerly associated with a house known as St Margaret's. The two parts of the site are separated by a dense line of coniferous trees.
- 1.2. The site is bounded by roadways to the east and west and by the Ramparts River to the south. To the north it is bounded by private amenity space associated with St Margaret's, although there is currently no boundary in place between the two sites. The existing disused car park is accessed off the roadway to the east, which also serves two streets of terraced red-brick dwellings (Ardee Terrace and Brook Street) to the north east of the appeal site, an industrial development to the east, and Brewery Business Park to the south of the appeal site.
- 1.3. The house known as St Margaret's is a Protected Structure (D014), as are all of the dwellings on Ardee Terrace and Brook Street (D362 – D401), and a number of structures within Brewery Business Park (D012a, D012b and CD012c).

2.0 Proposed Development

- 2.1. The proposed development, as amended on foot of a request for further information, consists of the construction of a part-two storey, part-three storey building consisting of 2 No. ground floor commercial units and 11 No. apartments (8 No. 2 bed and 3 No. 1 bed) and associated development.
- 2.2. The 2 No. proposed commercial units are indicated as offices, with stated areas of 97 sq m and 114 sq m, respectively, and have individual entrances from the front (east) elevation. 2 No. apartments are also located at ground floor, with the remainder at first and second floor level. Access to the lobbies serving the apartments would be possible from the north, west and south elevations.

- 2.3. The proposed building, as amended, features a flat roof with parapet, while the proposed finishes comprise rendered blockwork to ground floor with red brick to the upper levels. A number of balconies are proposed on the front (east), rear (west) and one side (south) elevation. The building would have a maximum height of 8.9m, with floor-to-ceiling heights of 2.4m – 2.45m.
- 2.4. The proposed vehicular access road is to the south of the proposed building, and 18 No. surface car parking spaces are proposed, 16 No. of which are located to the rear (west) of the proposed building, with 2 No. to the south.
- 2.5. The application, as supplemented by the further information submitted, included a Flood Risk Assessment, a Tree Survey, Civil Engineering Report, Site Appraisal and Concept Development report, infiltration test results, pre-connection enquiry to Irish Water, letter from LCC regarding Part V agreement, legal information regarding a right of way, and an Appropriate Assessment Screening Report.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Louth County Council decided to grant permission and the following summarised conditions are noted:
- C5(a): Visibility splay of 2.4m x 45m to be made available and maintained.
 - C5(b): No work to commence until visibility splays have been provided.
 - C5(e): 2m wide footpath to be provided.
 - C5(h): Developer responsible for full cost of repairing any damage to the adjoining public road and footpath.
 - C7: C&D waste management plan to be submitted.
 - C8: Ground vibration restriction for any piling.
 - C9: Details of site specific measures to minimise the risk of water pollution during construction phase to be submitted.
 - C12: Full list of finishes and materials to be submitted for agreement.

3.2. **Planning Authority Reports**

3.2.1. The Planning Officer's reports can be summarised as follows:

- Proposed residential and commercial development is deemed a permitted use under the zoning objective.
- Site can be considered a brownfield site and the provisions of the Core Strategy phasing are not applicable.
- Car parking provision is adequate.
- Proposal is in compliance with quantitative standards for apartments.
- Revised plans have substantially reduced the height, bulk, massing and scale of the proposed development. Flat roof design will lessen its impact on the location and the Protected Structure.
- 3D views demonstrate that proposed development will be concealed and largely hidden from the Protected Structure and will not have a negative impact once the planting has matured.
- Proposed development is not a major development in the context of the SAC and SPA. The finding of 'not significant' is acceptable.
- Matters relating to rights of way are beyond the scope of the Planning Authority and are a civil matter for the parties involved.

3.3. **Other Technical Reports**

3.3.1. **Conservation Officer:** No objection.

3.3.2. **Infrastructure Directorate:** No objection, subject to conditions.

3.4. **Prescribed Bodies**

3.4.1. **Irish Water:** No objection, subject to conditions, including a 10m wayleave over the 225mm foul water pipeline through the site.

3.4.2. **An Taisce:** Further design considerations are warranted. The proposed projecting eaves and gables are fussy and undermine the design, as does the use of uPVC. (It

is not clear from the information on file whether the further information submitted, which included a revised design, was circulated to An Taisce).

3.5. **Third Party Observations**

3.5.1. Three third party observations were made at application stage, with a further two observations following the receipt of further information. The issues raised were generally as per the appeals, as well as the following:

- Conflict with existing HGV traffic associated with industrial and commercial operations.
- Impact on pedestrian safety.
- Site has flooded several times over the years (photographs submitted).
- Ecological impact on otters, bats, kingfishers.
- Proposed development would affect observer's future development of his landholding due to location of proposed entrance close to location of his proposed entrance.

4.0 **Planning History**

4.1. **Appeal Site**

4.1.1. **Reg. Ref. 08/170:** Planning permission granted for 40 No. residential apartments in three separate 3 and 4 storey blocks.

4.1.2. **Reg. Ref. 14/1:** Refused application for extension of duration of planning permission Reg. Ref. 08/170. Application was refused due to flood risk.

4.2. **Surrounding Area**

4.2.1. I am not aware of any recent relevant planning history in the surrounding area.

5.0 **Policy Context**

5.1.1. Section 2.16.4 of the Louth County Development Plan 2015-2021 (CDP) states that the statutory Development Plan for the urban and surrounding environs area of

Dundalk is currently the Dundalk & Environs Development Plan 2009-2015 (DEDP) and that the CDP will be an over-arching Development Plan for the entire county including Dundalk and Drogheda. It goes on to state that following the adoption of the CDP, the existing DEDP will be reviewed and ultimately replaced by a Local Area Plan which will be a sub-set of and will be consistent with the provisions of the CDP.

5.1.2. This is supported by Policy SS 3 “to review the Dundalk and Environs Development Plan 2009 – 2015 and to prepare a Local Area Plan for Dundalk and Environs which will be consistent with the provisions of the County Plan”.

5.1.3. I note that Section 11C(a) of the Planning and Development Act 2000, as amended, states with respect to the dissolution of town councils that the development plan for the administrative area of such a town council shall continue to have effect to the extent provided for by that plan and be read together with the development plan for the administrative area within which the dissolved administrative area is situated.

5.2. Having regard to the abovementioned provisions of the CDP and the Planning and Development Act, I have therefore had regard to both the CDP and the DEDP in my assessment.

5.3. **Dundalk and Environs Development Plan 2009-2015**

5.3.1. The appeal site and surrounding area are zoned as Transportation Development Hub under the Dundalk and Environs Development Plan 2009-2015 (DEDP). This zoning objective seeks to support the provision of mixed use development commensurate with a transportation hub. Office and residential uses are permitted in principle under the TDH zoning objective, with a footnote to the zoning matrix stating that “development proposals within mixed uses zonings shall incorporate a range of uses with no single dominate [sic] use.”

5.3.2. Map 2 of the DEDP indicates Protected Trees within the appeal site (TP 18). These are described in Appendix 6 of the DEDP as follows:

“TP 18 Entrance to McArdle’s Brewery: Row of mature Lime in good condition. Cedar in grounds. Both are worth preserving.

Cambrickville Group of mature to senescent trees mainly in good condition with good crowns. Very tall and extending over the roadway.”

5.3.3. Policy CH5 is to:

“Seek the protection of important trees and groups of trees within the plan area and require that designers take into considerations the protection of trees in the design of new developments.

Require replacement trees at a ratio of 4:1, and of native species, where the removal of trees is required in order to facilitate the development.

Make Tree Preservation Orders for the 64 trees and groups of trees identified in appendix 6.”

5.3.4. As noted above, there are also a number of Protected Structures in the vicinity of the appeal site, including the house known as St Margaret’s (D014), the terraced dwellings on Ardee Terrace and Brook Street (D362 – D401), and a number of structures within Brewery Business Park (D012a, D012b and CD012c).

5.3.5. The following Policies are noted:

- **CS1:** To promote sustainable development on brownfield/ infill sites by excluding such sites from the requirement to comply with the phasing strategy throughout the Plan Area.
- **CS2:** To apply the phasing of new residential development as per the phasing strategy set out, whereby residential development, other than infill, brownfield or mixed use development shall only be permitted in the identified area within Phase 1. Only on completion of the development of 75% of these lands shall subsequent phasing be considered for additional residential development.
- **HC 20:** Require that the quantitative standard of a minimum of 14% of the gross site area is provided as public open space in all new residential developments and that the qualitative requirements described above are adhered to. Ensure that no area of public open space is less than 200 square metres in area and no boundary is less than 10 metres in length.
- **HC 22:** Require that all proposed residential developments, including apartments, comply with the internal space provisions as set out in appendix 4. Require that the minimum apartment sizes set out in appendix 4 are exceeded by at least 20% in respect of not less than 50% of the total number

of units in the scheme. Ensure that in any apartment development of 30 or more units, 40% of the units should exceed 80sqm in floor area.

- **CH9:** Protect and safeguard structures of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest which are included in the Record of Protected Structure in volume 2 of this plan.
- **EN 5:** Apply a presumption against permitting development within areas at risk of flooding and within flood plains subject to the application of the sequential test and or justification test to site selection.

5.4. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018

- 5.4.1. These Guidelines update the Sustainable Urban Housing: Design Standards for New Apartments Guidelines 2015 and provide guidance in relation to design quality, internal space standards, storage, amenity space and other matters. They contain a number of Specific Planning Policy Requirements.

5.5. Natural Heritage Designations

- 5.5.1. The appeal site is located c. 2.4km south west of the Dundalk Bay SAC and SPA (Site Codes 000455 and 004026, respectively). The Ramparts River, which flows along the southern boundary of the appeal site, provides a direct hydrological link to this SAC/SPA.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Two third party appeals were received. The issues raised can be summarised as follows:
- Traffic associated with the proposed development would impact on the operation of the Brewery Business Park and inhibit its expansion.
 - There is an existing entrance to an industrial development directly opposite the proposed entrance. No traffic impact assessment was carried out.

- A number of mature trees on the appellant's land would need to be removed to achieve the sightlines indicated. Applicant has not provided sufficient legal evidence that they are entitled or empowered to make any change to the grass verge bounding the appeal site. The road is not taken in charge. Appellant has submitted copy of legal letter and Deed of Conveyance.
- The submitted layout and landscaping plans and conditions 1, 5(a), 5(b), (e) and (h) propose the widening of the entrance, felling of trees, remodelling of grass verge and provision of a footpath on lands that are outside of the applicant's ownership or control. As such, the conditions are ultra vires and unenforceable.
- Introduction of apartments to the area would result in future noise complaints arising from the established activities of the commercial developments in the area.
- The Ramparts River has flooded the site on a regular basis (photographs submitted). Applicant has not demonstrated that there would be no surface water displacement which would exacerbate flooding in the vicinity or downstream.
- Inaccuracy in address given in statutory notices.
- Site is zoned as a Transportation Development Hub and mix of uses in proposed development does not comply with criteria for residential development under this zoning objective.
- Proposed development is not consistent with the Phasing strategy of the Dundalk and Environs Development Plan 2009-2015, as varied. It is 6th out of 7 of the most suitable areas within the Plan area for residential development.
- The appeal site does not meet the definition of brownfield or infill to be considered an exception under Policy CS1 to the Core Strategy's phasing hierarchy.
- Proposed development would materially contravene the Development Plan and Core Strategy.
- Impact upon Protected Structures, including St Margaret's House, Brook Street, Ardee Terrace and the MacArdle Moore Brewery.

- Revised proposal presents no substantial improvement over the original proposal, nor does it address any of the concerns regarding scale, bulk, design and proximity to protected structures.
- Redesigned building presents a bulky, boxy and unattractive structure that is exposed to the streetscape and at odds with the individual and collective historic and architectural character of the area. Contravenes the Architectural Heritage Protection Guidelines for Planning Authorities, Strategic Objective SO9 and Policies CH9 and HC9 of the Development Plan.
- It has poor quality design, is visually dominant, obtrusive and will detract from rather than positively contribute to the built form and urban fabric of the area.
- Proposed materials are out of place with the historic residential and industrial buildings.
- Impact on residential amenities of appellant (St Margaret's House), due to overlooking, loss of privacy, noise and general disturbance.
- 3D images are highly unreliable, as applicant never surveyed St Margaret's House and lands.
- Balconies will overlook and overbear the appellant's property.
- Proposed northern boundary planting will provide no protection against the loss of existing residential amenities.
- Loss of property value and attractiveness to future buyers.
- AA Screening Report was carried out without a site inspection, contains errors and did not consider potential cumulative or in-combination effects. In the lack of a proper assessment, the precautionary principle should apply.

6.2. Applicant Response

6.2.1. None.

6.3. Planning Authority Response

6.3.1. No further comment.

6.4. Observations

6.4.1. None.

6.5. Further Responses

6.5.1. None.

7.0 Assessment

7.1. I consider that the key planning issues to be assessed are as follows:

- Principle of proposed development.
- Design and layout.
- Roads and traffic.
- Architectural heritage.
- Residential amenity.
- Flood risk.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.2. Principle of Proposed Development

7.2.1. The proposed development comprises a mixed use residential and commercial development on lands where the zoning objective seeks to support the provision of mixed use development commensurate with a transportation hub. While office and residential uses are permitted in principle under the TDH zoning objective, I note that the zoning matrix includes a footnote stating that “development proposals within mixed uses zonings shall incorporate a range of uses with no single dominate [sic] use”. Having regard to the site context, with existing residential development to the north and north east, and industrial/commercial development to the east and south, I consider the proposed development to be generally consistent with the mixed use zoning objective for the site.

- 7.2.2. With regard to the Core Strategy and the phasing strategy set out therein, I note Section 2.5 of the DEDP, which states that the development of infill sites has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. This is supported by Policy CS1, which is to promote sustainable development on brownfield/ infill sites by excluding such sites from the requirement to comply with the phasing strategy throughout the Plan Area. Having regard to the appeal site's context and characteristics, I consider that it represents an infill site, and that it is not subject to the requirements of the phasing strategy.
- 7.2.3. In conclusion, I am satisfied that the proposed development is acceptable in principle, subject to consideration of the planning issues identified in Section 7.1 above.

7.3. **Design and Layout**

- 7.3.1. It is contended in one of the appeals that the proposed development is of inappropriate scale and mass, has a poor quality design and that it would detract from the character of the area.
- 7.3.2. With regard to the site layout, I note that the disused car park is mostly within the appeal site, but that no works are proposed within this area. The car park appears to have been disused for a considerable period of time, is in poor condition and is detrimental to the visual amenities of the area in my opinion. It is also the area of the site that is at the greatest risk of flooding. It is not clear what the applicant's intentions are with regard to this part of the appeal site, since no development is proposed in this area. I note, however, that the entrance to the car park is immediately adjacent to the proposed entrance to the proposed residential/commercial development. Having regard to the proximity of the two entrances, and the lack of clarity with regard to the car park, I consider that there is potential for a traffic conflict between the two developments, should the car park re-open at some later stage.
- 7.3.3. The proposed development would also entail the felling of a considerable number of trees in an area where Protected Trees are indicated on Map 2 of the DEDP. Policy CH5 of the DEDP is to "seek the protection of important trees and groups of trees within the plan area and require that designers take into considerations the

protection of trees in the design of new developments.” The Policy also requires replacement trees at a ratio of 4:1 where the removal of trees is required in order to facilitate the development.

- 7.3.4. I am not satisfied that the applicant has provided sufficient justification for the removal of so many trees to facilitate the proposed development, particularly when the presence of the disused car park within the appeal site is taken into account. While the car park area is subject to flood risk (refer to Section 7.7 below), it could potentially accommodate ancillary aspects of the development, such as open space or car parking and circulation areas.
- 7.3.5. By failing to address this aspect of the appeal site, I consider that the applicant has failed to provide a coherent development proposal for the entire site and that the development, as proposed, would represent piecemeal development and would be detrimental to the visual amenities of the area.
- 7.3.6. With regard to the overall design of the proposed apartment building itself, I consider that the design, as amended following the request for further information, is generally acceptable in terms of its height, massing, scale and materials. The part-two storey, part-three storey design is reasonable on these mixed use zoned lands in an urban area and is not excessive in my opinion. The proposed use of red brick, a high solid-to-void ratio and vertically emphasised window openings is also broadly consistent with the established architectural character of the area, while the scale and massing of the structure is comparable to some of the industrial/commercial developments to the east and south. The design is somewhat generic and non-descript, however having regard to the sensitive setting of the site and the surrounding architectural heritage, I consider this low-key approach to be a valid approach in the circumstances.
- 7.3.7. Notwithstanding this, while the proposed apartments exceed the minimum standards for unit size, mix and dual-aspect set out in the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2018), they fail to meet numerous other minimum standards of the Guidelines:
- Proposed floor to ceiling height at ground level and first floor level is 2.45m, with 2.4m at second floor level. This is contrary to SPPR 5, which requires a minimum 2.7m floor-to-ceiling height at ground floor. I consider this to be

particularly relevant with regard to the proposed commercial use at ground floor, which would generally require a greater floor-to-ceiling height. This is noted in the Guidelines, where a ground floor height of 3.5m – 4m is suggested to cater for potential commercial uses in the future.

- No private amenity space is provided to the two ground floor apartments.
- The proposed balconies at the upper levels are c. 1m deep, which is non-compliant with the Guidelines (min. 1.5m depth), and the resultant private amenity space for all apartments is also non-compliant with the minimum standards set out in the Guidelines.
- Similarly, the amount of storage provided for each apartment is non-compliant with the minimum standards set out in the Guidelines.
- No bicycle parking or storage is provided.

7.3.8. While the 2018 Guidelines were published after the planning application was lodged, I note that the storage space and balcony sizes in the proposed development are also generally non-compliant with the earlier Sustainable Urban Housing: Design Standards for New Apartments Guidelines 2007, which are referenced in Appendix 4 of the DEDP. Policy HC 22 of the DEDP requires, inter alia, that all proposed residential developments, including apartments, comply with the internal space provisions as set out in appendix 4 and the proposed development is therefore contrary to this Policy.

7.3.9. In conclusion, I consider that the proposed development fails to comply with Policy HC 22 of the DEDP and that it represents piecemeal development of a sensitive site by failing to provide a coherent development proposal for the entire site, including the disused car park to the south, and I therefore recommend that planning permission be refused on this basis.

7.4. **Roads and Traffic**

7.4.1. It would appear from the information submitted that the portion of the roadway to the east of the appeal site which leads from the junction with Brook Street to the entrance to Brewery Business Park is a private road, with the applicant having a right of way over the road.

- 7.4.2. The proposed access point to the proposed development would be located within this part of the road, and the applicant is proposing to remove up to 10 No. roadside trees to facilitate this access, a pedestrian footpath and the required sightlines. One of the appellants contends that these trees are located on his land, that this part of the road is not taken in charge, and that the applicant has not provided sufficient documentary evidence that they are entitled to make any change to the grass verge bounding the site. The appellant therefore contends that a number of the Planning Authority's Conditions relating to this access are ultra vires.
- 7.4.3. The Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land and that these are ultimately matters for resolution in the Courts. In this regard, I note section 34(13) of the Planning and Development Act 2000, as amended, which states that a person is not be entitled solely by reason of a permission to carry out any development.
- 7.4.4. However, Section 7.3.3 of the Guidelines states that Conditions should be capable of being complied with, and states by way of example that it is doubtful that a condition requiring the maintenance of sightlines by the removal or trimming of hedges or trees on a neighbour's property is within the applicant's power to fulfil, even where the neighbour has given consent that consent may subsequently be withdrawn.
- 7.4.5. In this instance, and on the basis of the information submitted, I am not satisfied that the applicant has demonstrated sufficient legal interest in relation to the access road in order to ensure that adequate sightlines can be provided and maintained and that a footpath can be provided to facilitate safe pedestrian access to and from the proposed development. Having regard to the presence of a number of industrial/commercial facilities in the immediate vicinity of the appeal site and their associated traffic, including HGV traffic, I consider that it would be inappropriate to grant permission with conditions regarding the provision of sightlines and footpaths that may not be capable of being complied with without third party consent.
- 7.4.6. With regard to the traffic impacts of the proposed development, I note the limited scale of the proposed development and I do not consider that the volume of traffic that would be generated would be so great as to result in any significant level of additional traffic congestion. However, as noted above, no works are proposed to the

existing disused car park on part of the appeal site and that the applicant has not clarified what future use is intended for this area. The existing entrance to this car park is located immediately to the south of the proposed entrance to the development, and opposite the existing entrance to the industrial facility on the eastern side of the road. Should the car park reopen in the future, I consider that the proximity of these entrances could result in traffic conflicts.

- 7.4.7. In conclusion, and on the basis of the information submitted, I consider that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted in both directions, and where I am not satisfied that the applicant has demonstrated sufficient legal interest to ensure that the required sightlines can be provided and maintained.

7.5. **Architectural Heritage**

- 7.5.1. The appeal site is located within an area that can be considered sensitive from an architectural heritage perspective. The proposed development would be undertaken on lands that were formerly associated with the house to the north known as St Margaret's, which is a Protected Structure (D014). All of the terraced dwellings on Ardee Terrace and Brook Street to the east of the appeal site are also Protected Structures (D362 – D401), as are a number of structures within Brewery Business Park (D012a, D012b and CD012c). Map 2 of the DEDP also indicates Protected Trees within the appeal site (TP 18).
- 7.5.2. While St Margaret's is accessed from the R171 to the north, its principal elevation faces south west, towards the appeal site, and the proposed development would result in the severance of part of its curtilage. The lands to be developed are currently heavily planted, giving a peaceful and secluded character to St Margaret's, despite its location within a built-up area. These trees are also indicated as being protected under the DEDP.
- 7.5.3. The applicant is proposing to remove numerous trees within the curtilage, as well as 10 No. roadside trees to the east (outside of the site boundary). The applicant submitted a number of 3D views illustrating views from the protected structure. These views are entirely computer generated rather than photomontages, and I do

not consider that they provide a particularly realistic impression of the potential impact on the protected structure.

- 7.5.4. In my opinion the existing trees make a substantial contribution to the character and setting of the Protected Structure, and they are recognised in the Development Plan as being worthy of protection. As outlined above, I do not consider that the applicant has provided sufficient justification for the extent of tree felling proposed, and I therefore consider that the removal of these trees within the curtilage of the Protected Structure would be detrimental to the preservation of its character and setting and that the proposed development would be contrary to Policy CH9 of the DEDP, which seeks to protect and safeguard structures of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest which are included in the Record of Protected Structures.

7.6. Residential Amenity

- 7.6.1. With regard to the potential impact on residential amenities, I consider that the dwelling to the north, known as St Margaret's is the only dwelling with the potential to experience significant effects on residential amenity. The terraced dwellings on Brook Street are a minimum of c. 20m from the proposed building, and the front elevation of the building would face the side of these houses.
- 7.6.2. St Margaret's is located to the north west of the proposed building, with a minimum separation distance of 22m from the two storey element of the proposed building, and c. 29m from the three storey element of the building. As a result, I consider that direct overlooking between the two buildings will not be significant. The windows on the three storey northern elevation of the proposed building are c. 10m from the boundary with St Margaret's, however given this distance and the existing and proposed planting, I do not consider that the level of overlooking of the private amenity space associated with St Margaret's would be so significant as to warrant refusal. I also consider that the separation distance between the two buildings would also be sufficient to ensure that the level of additional overshadowing beyond that caused by the extensive mature tree planting within the sites would not be significant.

- 7.6.3. There is currently no boundary between the two sites, with the northern part of the appeal site forming part of the gardens previously associated with St Margaret's. The Landscape Proposals Trees + Shrubs drawing No. LA01 indicates a boundary comprised of a double hedgerow with trees and understorey planting in between, and with a 1.7m high berm towards the east of the site. I note that the Deed of Conveyance submitted by the applicant in response to the Request for Further Information makes reference to a requirement to construct a 2.7m block wall with brick piers along the boundary, however no such wall has been constructed or is proposed in this application. I note that such a wall could have the potential to negatively impact on the root zones of existing trees, unless appropriately designed and detailed.
- 7.6.4. If the Board is minded to grant permission, I recommend that details of the boundary treatment should be submitted to the Planning Authority for agreement, prior to commencement of development.
- 7.6.5. With regard to noise, dust, vibration and other impacts on residential amenity during the construction period, I consider that these could be adequately addressed with a Construction Management Plan and controls on hours of construction, and I recommend that these be included as Conditions, should the Board be minded to grant permission.
- 7.6.6. Finally, one of the appellants contends that the introduction of apartments into the area would result in future noise complaints regarding the established activities of the commercial developments in the vicinity. I note, however, that the area is already mixed use in character, with existing terraced houses on Brook Street that are in closer proximity to industrial sites than the appeal site. Having regard to the established mixed use character and zoning of the area, I therefore do not consider that the proposed development is incompatible with existing non-residential development in the area.

7.7. Flood Risk

- 7.7.1. The Ramparts River runs along the southern boundary of the appeal site, and OPW CFRAM mapping indicates that the site is potentially at risk from fluvial, and to a

lesser extent coastal, flooding. Photographs of previous flood events affecting the site were submitted by third parties.

7.7.2. A Flood Risk Assessment was submitted with the planning application. I note that the OPW mapping included in the FRA is in Draft format. The Final OPW flood extent maps available at www.floodinfo.ie indicate that the extent of fluvial flooding at the appeal site is significantly less than was indicated on the Draft maps. The final maps indicate that the water level at the closest node for the 1% AEP would be c. 0.5m lower than indicated on the Draft map, while for the 0.1% AEP, the water level would be c. 0.7m lower than indicated on the Draft map. The area of the appeal site affected by flooding is the existing car park area on the southern side of the appeal site, where no development is proposed. The location of the proposed building does not appear to be subject to any significant flood risk. I note in this regard that photographs of previous flooding on file relate to the car park area of the site, and not the location of the proposed development.

7.7.3. The proposed development would comprise 'highly vulnerable development' within the context of the Planning System and Flood Risk Management Guideline for Planning Authorities, 2009, and having regard to the flood extent maps, I consider that the location of the proposed development would be within Flood Zone C. Having regard to the vulnerability matrix contained in Table 3.2 of the Guidelines, the proposal therefore represents appropriate development in terms of flood risk. The FRA submitted with the planning application comes to the same conclusion, however it also recommends a minimum finished ground floor level of 6.45m (6.55m is indicated on the drawings submitted) to cater for climate change. This is more than 1m above the predicted water level in the 0.1% AEP for fluvial flooding, and having regard to the fact that no changes to ground level are proposed within the area subject to flood risk (i.e. the existing car park), I am satisfied that the applicant has demonstrated that the proposed development is not at significant risk of fluvial, pluvial or coastal flooding, and that it will not result in an increased risk of flooding elsewhere in the vicinity.

7.8. **Appropriate Assessment**

7.8.1. The appeal site is located c. 2.4km south west of the Dundalk Bay SAC and SPA (Site Codes 000455 and 004026, respectively). The Ramparts River, which flows

along the southern boundary of the appeal site, provides a direct hydrological link to this SAC/SPA.

- 7.8.2. The qualifying interests of the SAC are Estuaries [1130], mudflats and sandflats not covered by seawater at low tide [1140], perennial vegetation of stony banks [1220], salicornia and other annuals colonising mud and sand [1310], Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330] and Mediterranean salt meadows (*Juncetalia maritimi*) [1410].
- 7.8.3. The qualifying interests of the SPA are Great Crested Grebe (*Podiceps cristatus*) [A005], Greylag Goose (*Anser anser*) [A043], Light-bellied Brent Goose (*Branta bernicla hrota*) [A046], Shelduck (*Tadorna tadorna*) [A048], Teal (*Anas crecca*) [A052], Mallard (*Anas platyrhynchos*) [A053], Pintail (*Anas acuta*) [A054], Common Scoter (*Melanitta nigra*) [A065], Red-breasted Merganser (*Mergus serrator*) [A069], Oystercatcher (*Haematopus ostralegus*) [A130], Ringed Plover (*Charadrius hiaticula*) [A137], Golden Plover (*Pluvialis apricaria*) [A140], Grey Plover (*Pluvialis squatarola*) [A141], Lapwing (*Vanellus vanellus*) [A142], Knot (*Calidris canutus*) [A143], Dunlin (*Calidris alpina*) [A149], Black-tailed Godwit (*Limosa limosa*) [A156], Bar-tailed Godwit (*Limosa lapponica*) [A157], Curlew (*Numenius arquata*) [A160], Redshank (*Tringa totanus*) [A162], Black-headed Gull (*Chroicocephalus ridibundus*) [A179], Common Gull (*Larus canus*) [A182], Herring Gull (*Larus argentatus*) [A184] and Wetland and Waterbirds [A999].
- 7.8.4. The Conservation Objectives for the SAC and SPA are to maintain the favourable conservation condition of the various habitats and bird species for which the sites have been selected.
- 7.8.5. An Appropriate Assessment Screening Report was submitted as part of the response to the Request for Further Information. It notes that foul water from the proposed development will discharge to the public sewerage network, and ultimately to the Dundalk WWTP. The report states that the WWTP is currently under capacity and that it has passed compliance tests for BOD, COD etc. With regard to surface water, it notes that permeable paving and soakaways will limit run-off. Having reviewed the revised proposals, there will be no direct discharge of surface water to the Ramparts River, with overland flow across the disused car park and infiltration of

groundwater the only means by which surface water from the appeal site could enter the Ramparts River.

- 7.8.6. No works are proposed to the existing car park which separates the location of the proposed building and associated development from the river. As a result, there is effectively a buffer of at least 32m from the river. Having regard to the built-up character of the surrounding area, and subject to standard good construction practice measures for works in the vicinity of watercourses, I do not consider that any contamination of the Ramparts River with silt, oils or other pollutants is likely to arise, and neither do I consider that significant in combination effects are likely to arise.
- 7.8.7. Therefore, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Dundalk Bay SAC or SPA (Site Codes 000455 and 004026, respectively), or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

7.9. **Environmental Impact Assessment**

- 7.9.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive locations, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 **Recommendation**

- 8.1. I recommend that planning permission be refused for the reasons set out below.

9.0 **Reasons and Considerations**

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements

the development would generate on a road at a point where sightlines are restricted in both directions and where the Board is not satisfied that the applicant has demonstrated sufficient legal interest to ensure that the required sightlines can be provided and maintained.

2. Having regard to the sensitive location of the appeal site, which is partially within the curtilage of a Protected Structure (Ref. D014) and which features protected trees (Ref. TP18), and noting the failure to provide a coherent development proposal for the entirety of the site, including the disused car park, it is considered that the applicant has not provided sufficient justification for the extent of tree felling proposed, and that the proposed development would represent piecemeal development that would materially and adversely affect the character and setting of the Protected Structure and be detrimental to the visual amenities of the area. The proposed development would therefore be contrary to Policies CH5 and CH9 of the Dundalk and Environs Development Plan 2009-2015 and would be contrary to the proper planning and sustainable development of the area.
3. Policy HC 22 of the Dundalk and Environs Development Plan 2009-2015 requires that all proposed residential developments, including apartments, comply with the internal space provisions as set out in Appendix 4 of the Plan. The storage areas and balconies within the proposed development do not comply with these provisions or with those set out in the more recent Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities 2018 and the proposed development would therefore be contrary to Policy HC22 and to the proper planning and sustainable development of the area.

Niall Haverty
Planning Inspector

16th October 2018