



An
Bord
Pleanála

Inspector's Report ABP-301588-18.

Development

Modifications to SD17A/0211 to include reconfiguration and change of use to gym and offices with 2 additional floors comprising offices.

Location

Coby Autos premises and lands within and adjoining the Red Cow Complex, Naas Road, Dublin 22.

Planning Authority

South Dublin County Council.

Planning Authority Reg. Ref.

SD18A/0061.

Applicant(s)

Prospectside Limited.

Type of Application

Permission.

Planning Authority Decision

Grant subject to conditions.

Type of Appeal

Third Party v. Decision.

First Party v. Application of DCS.

Appellant(s)

1. Prospectside Limited.
2. 3 Dental.

Observer(s)

None.

Date of Site Inspection

28th September 2018

Inspector

Susan McHugh

1.0 Site Location and Description

- 1.1. The subject site is located to the south of the Naas Road R110, approximately 200m to the east of the Red Cow M50/N7 interchange. The Naas Road is defined by two lanes of traffic, either side of the Red Luas line which runs along the central median. A footbridge over the Naas Road is accessed via a pedestrian and cycle ramp on both sides of the road, and there is also a central ramp to the Luas Line. The Red Cow Luas stop with a park and ride facility is located approx. 800m to the west across the M50.
- 1.2. The site is located within and adjoining the Red Cow Complex and is accessed off the Robinhood Road to the south east. This road provides access to the managed car park serving the Red Cow Inn to the west, and Red Cow Hotel and Business Park to the south west. Red Cow House is located directly to the north.
- 1.3. The existing premises comprises 3 units (B, C and D) and a portion of the adjoining Red Cow Inn. Unit C currently operates as a car repair garage trading as Coby Autos. Units B and C are currently vacant. The existing buildings on the site have a stated area of 1,590sq.m.
- 1.4. Red Cow House is a two storey building with frontage onto the Naas Road and is occupied by 3Dental the third-party appellant to the appeal. The northern rear elevation of this building which backs onto the appeal site comprises a number of windows at second floor level.
- 1.5. Car parking serving Red Cow House is provided for at basement level. Surface car parking serving units B, C and D is located to the east of the site.
- 1.6. The site area is stated as 0.21ha.

2.0 Proposed Development

- 2.1. Permission is sought for modifications to permission P.A. Reg. Ref. SD17A/0211 to include the following;
 - 2.1.1. Amendments to the permitted 4-storey with mezzanine over basement mixed-use building as follows:

- *Basement* - Reconfiguration and reduction in floor area of the permitted basement, change of use of stores, plant, toilets and ancillary areas to fitness room, gym/changing rooms, showers/toilets, stores and ancillary office areas;
- *Ground Floor and Mezzanine* - Reduction in floor area of the permitted ground floor and increase in floor area of the permitted ground floor mezzanine;
- *Ground Floor and Mezzanine* - Reconfiguration and change of use of permitted exhibition space, lobbies and delivery route to offices, reception and lobby areas at ground floor and ground floor mezzanine levels;
- *First Floor* - Reconfiguration and increase in floor area of the permitted first floor, change of use of permitted café/bistro to offices and omission of east facing terrace;
- *Second and Third Floor* - Reconfiguration and increase in floor area of the permitted second and third floor offices;
- *Fourth and Fifth Floor* - Provision of 2 additional floors comprising offices;
- Alterations to finished floor levels, elevations and ancillary areas throughout;

Table 1: Proposed Commercial Development

Floor Level	Proposed	Office	Gym Use
Basement	710sq.m.		Gym
Ground	921sq.m	Office	
Mezzanine	675sq.m	Office	
First - Fifth	912sqm x 5	Office	
Total	6,866sq.m	6,156sqm	710sq.m
%	100%	90%	10%

2.1.2. The gross floor area of the proposal will increase by c.1,542sq.m. resulting in a total gross floor area of c. 6,866sq.m;

2.1.3. Finishes include polished precast concrete cladding at lower levels and black painted glass panels cladding system on upper floors.

- 2.1.4. The floor area of units B, C & D to be demolished is 1,590sq.m.
- 2.1.5. Minor amendments to the Red Cow Inn permitted development including shared fire exit at ground floor level, these works refer to an area of 40sqm;
- 2.1.6. Services provision, access, car/bicycle parking, landscaping and boundary treatment works as permitted under SD17A/0211;
- 2.1.7. All associated site development works.
- 2.1.8. The application was accompanied by the following;
- Cover Letter
 - Planning Statement
 - Architects Design Statement
 - Traffic Impact Assessment
 - Engineering Assessment Report
 - Commercial Energy Statement

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to **grant** permission 17/04/2018 subject to 23 conditions. Conditions of note include: -

Condition No. 2.- Relevant conditions of SD17A/0211 shall apply.

Condition No. 5-7. – Workplace Travel Plan to be submitted, electrical charging points for electric vehicles, and limited access to car park similar to the Red Cow Hotel Car Park.

Condition No. 8, 12, & 19-21. – Construction Waste Management Plan to be submitted, noise level restrictions and management of dust during construction and demolition phase requirements.

Condition No. 9. - Exact details of the proposed lift and stairs (granted as part of Reg. Ref. SD17A/0211) to be submitted and agreed with the Roads Dept. and TII.

Condition No. 10 & 11. – Signage details to be agreed and restrictions on advertising.

Condition No. 13. – Landscape plan submitted under SD17A/0211 dwg. no. 15360-2-100 shall be implemented.

Condition No. 14. – Consult with Air Corps Air Traffic Services, the Irish Aviation Authority and the Coastguard in respect of the erection of any cranes on the approaches to Tallaght Hospital.

Condition No. 15. – Basement gym to be ancillary to office use.

Condition No. 16-18. – Archaeological monitoring.

Condition No. 23. - Section 48 Development Contribution of €547,426.18.

3.2. Planning Authority Reports

3.2.1. **Planning Report** dated 17/04/2018 is the basis for the planning authority decision. It includes;

- Office use is acceptable, considering its proximity to the Red Cow Luas Stop and appropriate transport provision.
- Preparation of the Ballymount Local Area Plan has not yet commenced, however, the proposed development is not considered premature, given the land use zoning objective, planning history, accessibility and lack of infrastructural barriers.
- The form and mass, and proposal to build right up to the northern boundary with Red Cow House has already been established under the permitted development.
- In the context of the gateway and nodal character of the Red Cow interchange, the proximity to public transport and the existing surrounding land uses and forms of the area, it is considered that a building of this height will contribute towards the enhancement of legibility, and will emphasise the landmark status of the Red Cow.
- The general location is considered appropriate for taller buildings given existing land uses and non-residential character of the surrounding area.

- Lack of details in relation to signage, which is considered extremely important given the landmark nature of the proposed development and the pivotal location and visible nature of the site.
- The proposed contemporary design would represent a departure from an outdated collection of buildings, which add little in the way of character to the area and is appropriate in this location.
- The parent permission provides for the upgrading of the pedestrian bridge with an elevator and staircase, which will result in a reduced walking distance between the Luas stop and the proposed office building.
- No changes are proposed to car parking or bicycle parking in this application.
- A landscape masterplan should be submitted and can be dealt with by way of condition.
- Given the height of the proposed development and proximity to surrounding airports/aerodromes it is appropriate to attach a condition relating to the erection of cranes on site.
- Notes the location of two Seveso sites to the south including Tibbet and Britten and Irish Distillers, the proposal will not result in any undue impact on public health and safety.
- As the site borders the site of recorded monument DU017-077 standard conditions regarding archaeology recommended.

3.2.2. **Other Technical Reports:**

Roads Department – No objections subject to modifications.

Water Services – No objection subject to requirements.

Environmental Services – No objections subject to conditions.

Public Realm Department (Parks and Landscape Services) – No comments.

EHO – No objection subject to requirements.

3.3. Prescribed Bodies

Irish Water – No objections subject to requirements.

Transport Infrastructure Ireland (TII) – No observations.

Health and Safety Authority – Does not advise against the granting of planning permission.

The file was referred to the Irish Aviation Authority and the Department of Defence, however no responses are noted on file.

3.4. Third Party Observations

One observation was submitted by Simon Clear and Associates on behalf of 3Dental, Red Cow House, Naas Road, to the planning authority and has been forwarded to the Board and is on file for its information. The issues raised are comparable to those raised in the third-party appeal summarised in section 6 below.

4.0 Planning History

Appeal Site

P.A. Reg. Ref. SD17A/0211 Permission **granted** 18/12/2017 for the following;

(i) Demolition of the existing 2 storey commercial building (comprising 3 units) and a portion of the adjoining Red Cow Inn (total c. 1,765sq.m);

(ii) Construction of a **4 storey with mezzanine** over basement mixed use building comprising the following:

- *Basement level* - stores, plant, toilets and ancillary areas at basement level;
- *Ground Floor and Mezzanine level* - event/exhibition space;
- *First Floor* - café/bistro;
- *Second and Third Floor* - offices including terraces;

Lobby and circulation areas throughout; plantroom at roof level with a total gross floor area including basement (c. 5,324sq.m).

(iii) Associated works to the adjoining Red Cow Inn to provide connection at various floors;

(iv) Improvements to the existing pedestrian footbridge over the Naas Road (R110) and provision of a new stairs (and lift structure for future fit out) to connect to the bridge.

(v) Revisions to car parking within the Red Cow Complex and adjoining the Coby building.

(vi) All associated site development works, services provision, drainage, vehicular access, car and bicycle parking, landscaping and boundary treatment works.

The subject appeal site formed part only of the Red Cow Complex site with an overall area of 2.2ha. The applicant was Prospectside Limited and this permission has not been implemented.

Adjoining Red Cow Moran Hotel Extension

P.A. Reg. Ref. SD17A/0470: Permission **granted** 23/02/2018 for modifications to existing hotel extension previously permitted under Reg. Ref's SD15A/0386 and SD15A/0138 to include the provision of **2 additional storeys** above the existing 7 storey hotel wing comprising 44 hotel bedrooms and all associated site works. The above revisions result in a net increase in gross floor area of hotel accommodation by c.1,780sq.m. This permission is currently being implemented on site.

P.A. Reg. Ref. SD15A/0386: Permission **granted** 19/02/2016 for provision of **2 additional storeys** above the permitted 5 storey extension and containing 52 additional hotel bedrooms; revisions to existing/permitted car park to now provide 412 spaces and associated landscape works; all associated site works as permitted under Reg. Ref. SD15A/0138. The above revisions result in a net increase in gross floor area of c.2,376 sq.m.

P.A. Reg. Ref. SD15A/0138 ABP PL06S.245321: Permission **granted** 17/07/2015 by the planning authority for construction of new hotel wing comprising **5 storeys** and containing 104 bedrooms, meeting rooms and lounge area, etc.

First party appeal to the Board against development contribution condition no. 10 upheld. The Board amended the development contribution, in light of the fact that it had not been correctly applied by the planning authority.

Adjoining Site to the North – Red Cow House

P.A. Reg. Ref. SD15A/0172: Permission **granted** 17/09/2015 for change of use of the first floor 520sq.m of the subject office building to a Dental Practice comprising 3 surgery rooms, 2 offices, waiting room, hygienist room, consultation room, LAB, compressor room, toilets and staff facilities. This permission has been implemented.

P.A. Reg. Ref. S00A/0249: Permission **granted** 13/10/200 for workshop and offices to replace existing and basement car park.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The **South Dublin County Development Plan 2016-2022** is the relevant policy document pertaining to the subject site. The site is zoned 'EE' and the zoning objective seeks '*to provide for enterprise and employment related uses*'.

Offices over 1,000sqm are open for consideration, in accordance with Chapter 4 'Economic Development & Tourism' Policy for Offices over 1,000 sq.m. within the EE zoning. A Sports Club/Facility is also open for consideration within the EE zoning.

Recorded Monument: DU017-077 described as earthwork, possible site, is located to the north east of the appeal site.

SEVESO Sites: There are two existing industrial sites located 300m to the east and 200m to the south east of the subject site, designated as a Lower Tier SEVESO Site.

Chapter 1 refers to the Core Strategy

Section 1.9.0 refers to Local Area Plans, Approved Plans and Studies.

CS6 SLO 1: seeks '*To prepare a Ballymount Local Area Plan for lands zoned REGEN, EE, and LC, stretching southwest from Walkinstown Roundabout along the Greenhills Road (including those areas adjacent to Greenhills Estate) to the M50, north from there to the Red Cow, east from there along the Naas Road to the city boundary, and along the boundary back to Walkinstown Roundabout. The subject Local Area Plan to be concluded by the end of 2018; and the lands north of this*

between the M50, the Grand Canal and city boundary currently zoned EE to be considered for inclusion in this plan. The Naas Road Framework Plan (2010) to be taken into consideration during the preparation of the Local Area Plan.'

Chapter 4 refers to Economic Development and Tourism

Section 4.3.0 of the Plan deals with Employment Location Categories and it is the overarching policy of the Council, **ET Policy 1** refers, *'to support sustainable enterprise and employment growth in South Dublin County and the Greater Dublin Area, whilst maintaining environmental quality.'*

ET1 Objective 6: *'To direct people intensive enterprise and employment uses such as major office developments (>1,000sq.m gross floor area) into lands zoned Town Centre and Regeneration Zones in Tallaght, lands zoned Town Centre in Clondalkin and also to lands zoned District Centre and Enterprise and Employment, and Regeneration Zones subject to their location within 400 metres of a high capacity public transport node (Luas/Rail), quality bus service and/or within 800 metres walking distance of a Train or Luas station, the latter requiring demonstration of required walking distance or provision of a permeability project, in accordance with the Permeability Best Practice Guide (2013), to achieve same.'*

Chapter 5 refers to Urban Centre and Retailing

Section 5.1.5 of the Plan deals with Building Height in Urban Centres

UC Policy 1 refers, *'to support varied building heights across town, district, village and local centres and regeneration areas in South Dublin County.'*

UC6 Objective 1: *'To encourage varied building heights in town, district, village, local and regeneration areas to support compact urban form, sense of place, urban legibility and visual diversity while maintaining a general restriction on the development of tall buildings adjacent to two-storey housing.'*

UC6 Objective 2: *'To ensure that higher buildings in established areas take account of and respect the surrounding context.'*

UC6 Objective 3: *'To direct tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centre, Regeneration and Strategic*

Development Zones, and subject to an approved Local Area Plan or Planning Scheme.'

Chapter 7 refers to Transport and Mobility

TM Policy 7 refers, *'It is the policy of the Council to take a balanced approach to the provision of car parking with the aim of meeting the needs of businesses and communities whilst promoting a transition towards more sustainable forms of transportation.'*

TM7 Objective 1: *'To carefully consider the number of parking spaces provided to service the needs of new development.'*

Chapter 11 refers to Implementation

Table 11.17 sets out Masterplan Considerations, key considerations include access and movement, open space and landscape, land use and density, built form and phasing.

Table 11.18 sets out Key Principles for Development within Enterprise and Employment Zones which include access and movement, open space and landscape, built form and corporate identity.

5.1.2. **Naas Road Development Framework Plan 2010**

The Framework Plan which is a non-statutory plan contains masterplan/urban design principles that guide development within and outside the plan area. The subject site is identified in the Framework Plan within the 'Red Cow East' Character Area as a mixed-use industry led area (see attached).

5.1.3. **South Dublin County Council Development Contribution Scheme 2016-2020**

5.2. **Natural Heritage Designations**

Not relevant given the brownfield nature of the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Appeal No.1.

The third-party appeal was lodged by Simon Clear and Associates on behalf of 3 Dental, Red Cow House, Naas Road. The grounds of appeal are summarised as follows:

- Concern in relation to scale and extent of the proposed building which is 7 storeys over basement (c.33.7m over ground level).
- Represents a large intrusion on the southside of Red Cow House which will restrict future development and deprive it of natural light.
- Planning authority's assessment had regard to the Naas Road Development Framework Plan which is not a statutory plan.
- Assessment of the development is based on the previous permission, and the current proposal is fundamentally a new application with a new site boundary, building footprint, primary use and height relationship to Red Cow House.
- A considered masterplan approach is required as the existing permission cannot be put into effect due to the provisions of Section 34(13) of the Planning and Development Act 2000 as amended.
- Question the planning authority's assertion that the form and mass has been established when the proposed development has sought to increase the building height by a further c.10.5m.
- The planning authority have dismissed the impact of the proposed height will have on the existing 3-storey Red Cow House directly adjacent.
- The proposal is in fact 7 storeys in height, although planning assessment refers to a 6 storey building.

- CS6 SLO requires the preparation of a local area plan to guide future development in the Ballymount area, and notes that the Ballymount LAP has not yet commenced.
- The proposed development which is to be built right on its northern boundary with the Red Cow House, will restrict the future development and deprive it of natural light in the upper floor windows. This will have a negative impact on the internal amenity and function of the building.
- The existing permitted development cannot be put into effect due to its impact upon the third party's legal rights which is under separate legislation and common law.
- Proposed development is premature pending the preparation of the Ballymount LAP.
- The proposal for an additional two floors to the permitted development, as shown in sections, elevations and CGI's, will result in a building height which is disrespectful to neighbouring properties and not in keeping with the surrounding built environment.

6.1.2. Appeal No. 2.

The first party appeal was lodged by McGill Planning on behalf of the applicant Prospectside Limited, against a financial contribution condition of the decision of the Planning Authority to grant permission. The grounds of appeal are summarised as follows:

- The appeal is made pursuant to Section 48(10)(b) of the Planning and Development Act, 2000 (as amended) against condition No.23 of the permission i.e. that the terms of the development contribution scheme have not been properly applied.
- It is noted that the applicant has previously paid financial contributions in respect of previous permissions P.A. Reg. Ref. SA123 and 90A-2152. Correspondence is enclosed dated 15th June 1982 and 30th October 1992.
- The argument submitted is that the contribution was applied on the total floor area at €79.73 per square metre commercial floor space, but that the planning

authority applied it to the gross floor space applied for, rather than the net floor space – i.e. 6,866 sq.m (totalling €547,426.18) instead of 5,276 sq.m (totalling €420,655.48).

- The Board is therefore requested to amend the amount stated in condition No.23 of the development contribution €547,426.18 to €420,655.48.

6.2. Planning Authority Response

- 6.2.1. The planning authority in a letter dated 7/05/2018 confirmed its decision and refers to issues raised in the appeal which have been covered in the planner's report.
- 6.2.2. No further information was provided in respect to the calculation of the Section 48 Development Contribution as requested by the Board.

6.3. Applicants Response

A response to the third-party appeal was lodged by McGill Planning on behalf of the applicant, and can be summarised as follows;

- *Increased Building Height* – The proposal is not 7 storeys but in fact 6-storey with a mezzanine above ground floor level. The proposed increase in height of c.10m would not contravene UC6 Objective 1, 2, or 3 of the South Dublin County Development Plan pertaining to building height.
- *Intensification of the Office Use* – Acknowledge that the office floor space will increase but that it is in line with ET1 Objective 6 given its location close to a Luas station. The zoning objective also supports high intensity employment use such as offices.
- *Increased Scale and Extent of the Building* – Agree with the Area Planner who stated that the general form and massing has already been established by the parent permission and is appropriate for this location.
- *Intrusion on the South Side of Red Cow House* – The parent and current application do not include windows on the north facing elevation, and present a blank wall that would facilitate any future development of the adjoining site.

- *Framework Plan Non-Statutory Document* – Agree that the Naas Road Plan, is not a statutory plan, the proposal has been designed in accordance with the policies and objectives of the County Development Plan.
- *The proposal is a New Application* – Refute that the proposal is a new application with new site boundary, new footprint, new primary use and new height relationship to Red Cow House.
- *Masterplan Required* – The masterplan elements including access and movement, open space and landscaping, built form and corporate identity formed part of the planning report. A masterplan for the subject site is not considered necessary.
- *Areas Planner's Assessment* – Is comprehensive and addresses all relevant concerns.
- *Visual Amenity and Loss of Light* – First-floor windows to Red Cow House serve an attic area and has no permitted commercial use. The drawings submitted with the 2000 application showed a blank elevation with no windows at first floor level which suggests that the windows are unauthorised. The façade materials proposed on the north facing elevation will reflect light therefore, mitigating against the potential loss of amenity and/or light.
- *Ballymount Local Area Plan* – Notes Policy CS6 SLO 1 and that the planner did not consider the proposal premature pending the commencement and completion of the Ballymount LAP.
- *Legal Rights* – Applicant has legal title over the right of way to the site and the permitted building does not over sail adjoining properties in any way.

6.4. **Observations**

The appeal was referred to the Development Applications Unit, Department of Culture, Heritage and the Gaeltacht, An Taisce, and The Heritage Council, however, no responses were received at the time of writing.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment and Environmental Impact Assessment also needs to be considered. The issues are addressed under the following headings.

- Principle of Development
- Building Height and Design
- Impact on Adjoining Development
- Development Contributions
- Other Matters
- Appropriate Assessment
- Environmental Impact Assessment

7.2. Principle of Development

7.2.1. The applicant was granted planning permission in December 2017 for the demolition of the existing premises on site and construction of a new four storey with mezzanine over basement mixed use block with an overall floor area of 5,324sq.m. The principle of development has therefore, already been established on the site.

7.2.2. The current proposal is for modifications to that permission, with an additional two floors and an increase in overall area of 1,542sq.m. resulting in a total area of 6,866sq.m. A comparison of the permitted and proposed developments in terms of floor area is set out below in Table No. 2.

Table No. 2: Permitted and Proposed Developments:

Floor Level	Permitted SD17A/0211	Proposed SD18A/0061	Comparison
Basement	1,135sq.m.	710sq.m.	-425sq.m
Ground	1,012sq.m	921sq.m	-91sq.m

Mezzanine	641sq.m	675sq.m	+34sq.m
First	844sq.m	912sqm	+68sq.m
Second	846sq.m	912sq.m	+66sq.m
Third	846sq.m	912sq.m	+66sq.m
Fourth	-	912sq.m	+912sq.m
Fifth	-	912sq.m	+912sq.m
Total Floor Areas	5,324sq.m	6,866sq.m	+1,542sq.m.

- 7.2.3. The proposed uses comprise a gym at basement level and offices over, both of which are open for consideration within the Enterprise and Employment (EE) zoning, and as such are in accordance with the zoning objective for the site. While noting that the permitted development comprised a different mix of uses (including an event/exhibition space at ground and mezzanine level, café/bistro at first floor, and office use on two floors only at second and third floor), I consider the proposed uses appropriate at this location next to the Red Cow Hotel and Business Park.
- 7.2.4. I accept the point made in the third-party appeal that the proposed development is materially different to that previously permitted under P.A. Reg. Ref. SD17A/0211. However, a fresh planning application has been lodged to address these changes. I also accept that the current proposal does represent an intensification of use compared with the previously permitted development as submitted by the appellant.
- 7.2.5. I also note that the proposed office use accounts for ninety percent of the overall development. The applicant however has argued that there is an under supply of office space in the area generally, and that the subject site is ideally located for such uses, given its proximity to the Red Cow M50/N7 interchange and Red Cow Luas stop. I concur with the applicant that this brownfield site is underutilised, and in my opinion the proposed modifications and change of use to the permitted development as proposed would not result in overdevelopment of the site and is appropriate.
- 7.2.6. In the context of permitted development within the overall Red Cow Inn Complex the site is clearly undergoing significant change, most notably with the further extension of the Red Cow Hotel which is under construction.

- 7.2.7. The appeal site was identified within the 'Red Cow East' Character Area as a mixed-use industry led area in the non-statutory Naas Framework Plan 2010. Under the current development plan there is a specific local objective CS6 to prepare a Local Area Plan for the wider Ballymount area. The third party contends that the proposed development is premature pending the completion and adoption of this Local Area Plan. The applicant has set out in their application and response to this matter, that the design approach adopted included those key principles listed in Table 11.8 for development within enterprise and employment zones and also the key considerations as set out in Table 11.17 for Masterplans in the County Development Plan.
- 7.2.8. I have considered the case made in the context of the enterprise and employment zoning objective in the South Dublin County Council Development Plan 2016-2022, and the fact that there is an established permission for a mixed-use development on the site. I also note the location of the site close to the M50/N7 interchange, general accessibility and proximity to existing public transport most notably the Luas, and surrounding commercial land uses. I am satisfied that the proposed development can be considered for assessment without an approved area plan. I am also satisfied that the design approach adopted takes cognisance of the key principles for development as set out in Table 11.17 of the County Development Plan.
- 7.2.9. It is noted that Policy ET1 Objective 6 of the South Dublin County Development Plan 2016-2022, seeks to direct major office developments into lands zoned EE Zones subject to their location within 400 metres of a high capacity public transport node (Luas/Rail), quality bus service and/or within 800 metres walking distance of a Train or Luas station, the latter requiring demonstration of required walking distance or provision of a permeability project.
- 7.2.10. The subject site is currently located approx. 800m from the Red Cow Luas stop and park and ride facility which is currently accessible for pedestrians and cyclists via an overbridge across the Naas Road (R110). As part of the previously permitted development permission was granted for provision of a new stairs (and lift structure for future fit out) to connect to the over bridge. I am satisfied that the current proposal which also includes these works will enhance pedestrian permeability and improve access to the Luas station.

7.2.11. I am satisfied that the proposed development accords with the zoning objective for the area, the key principles for development within enterprise and employment zones, and specifically to Policy ET1 Objective 6 of the current development plan, and as such would not be premature pending the adoption of a LAP for the area.

7.3. Building Height and Design

- 7.3.1. One of the principle modifications to the permitted development is the increase in scale and consequent increase in building height. The permitted development under P.A. Reg. Ref. SD17A/0211 was described in the public notices as 4 storey with mezzanine over basement, while the current proposal is described as 5 storey with mezzanine over basement. The building height of the permitted development is 24.5m compared to the current proposal which has a building height of 35m.
- 7.3.2. The appellant notes the description of the proposed development in the current application which clearly refers to the '*provision of 2 additional floors comprising offices with a floor area of c.912sq.m each*', and submits that the overall building height now proposed is 7 storeys. The applicant however, states that the proposal is not 7 storeys but is in fact 6 storeys with a mezzanine above ground floor level.
- 7.3.3. Having studied the cross-section drawings submitted with the current application, it is clear to me that the proposed development provides floor space on seven levels over basement, which includes the mezzanine area of approx. 675sq.m. above ground floor level.
- 7.3.4. I have also studied the cross-section drawings submitted with the previous application which provides floor space on five levels, again including the mezzanine level. I am satisfied that the proposed development provides for two additional floors and results in a building which reads externally as a seven storey building.
- 7.3.5. There is no question but that this is a significant building in the context of the adjoining commercial and light industrial buildings on adjacent sites. Directly to the south and southeast of the subject site is the Red Cow Business Park and the Industrial Estate. Adjoining commercial buildings are generally of 2-4 storeys with flat roofs. Directly to the north of the subject site is a commercial 2 storey Red Cow House. To the northwest along the Naas Road beyond the Red Cow Inn there is a terrace of commercial buildings including offices, and a bank facing onto the Naas

Road. On the opposite side of the Naas Road across from the subject site is a large undeveloped site beside the Red Cow Interchange which is partially used for open storage.

- 7.3.6. Directly to the east of the subject site is the Red Cow Inn, a redbrick building comprising a number of bars, restaurants and a nightclub. Minor, mainly internal alterations to the Red Cow Inn building are proposed as part of the proposed development to accommodate shared fire escape with the proposed new office building.
- 7.3.7. Moran's Red Cow Hotel is located further to the east, and includes a more recent extension which is seven storeys in height. This extension is currently being extended by a further two floors resulting in an overall building height of nine storeys. The Hotel Complex is accessed from the Naas Road, with a secondary access from the rear via Turnpike Road and Robinhood Road. There is also a large surface car park located to the front of the hotel.
- 7.3.8. I would concur with the assessment of the site context as set out in the Design Statement submitted with the application, that despite the fact that the Naas Road is one of the main arteries leading into the City, most of the existing buildings facing onto it are low scale and do not create a sense of definition and enclosure that helps to shape the experience of being in a city and a place. It also notes the poor quality of the existing building on site and that it has a poor response to the public realm with no active uses to the Naas Road and Robinhood Road, which in my opinion is a fair assessment.
- 7.3.9. I have reviewed the comprehensive Design Statement submitted which clearly sets out the design philosophy and concept for the site. It notes that the parapet level of the proposed development is similar to the parapet level of the 2 storey extension over the existing 7 storey Red Cow Hotel wing, which I have already noted is currently under construction.
- 7.3.10. The proposed façade design is urban with two distinct elements for the lower levels and upper floor levels. The use of materials such as curtain walling and selected metal fins along with concrete/stone cladding panels is innovative and modern. I have examined the comprehensive Visual Impact Assessment submitted, and from my own site inspection am satisfied that the photomontages are representative of the

principal viewing points from the surrounding road network and adjoining sites. The proposed building will result in a significant visual impact, but in my opinion a positive one which will help to rejuvenate the area.

7.3.11. As already noted, this area is clearly in transition and in my opinion the subject site has the capacity to absorb a development of this scale, massing and building height. In my opinion the proposed increase in height of c.10.5m is acceptable would provide urban legibility, visual diversity, takes account of the surrounding context and is appropriate at this strategic and landmark location in accordance with UC6 Objective 1, 2 or 3 of the South Dublin County Development Plan pertaining to building height. I am also satisfied that this building height is appropriate at this landmark location.

7.3.12. In conclusion, I am satisfied that the proposed building height is acceptable, and that there is no basis for this ground of appeal.

7.4. Impact on Adjoining Development.

7.4.1. The crux of the third-party appeal is in my opinion, the relationship with the adjoining commercial development Red Cow House located directly to the north of the appeal site, which is in use as a dental practice.

7.4.2. In particular, the third party has raised concern in terms of loss of light to the existing premises which includes a number of windows at second floor level located along its rear south facing elevation. I noted these windows on the day of my site inspection and would note that the existing commercial building is in use as a dental practice. I also note that there are no windows proposed on the north facing elevation of the proposed building so issues of overlooking do not arise.

7.4.3. I have had regard to the proposed sections, elevations and contiguous elevations, and photomontages submitted, and fully accept that there is an abrupt transition in building height between the existing premises and the proposed development.

7.4.4. I have considered the merits of omitting a floor thereby reducing the overall height of the proposed development, but am not convinced that this would have a material impact on the amenity of the adjoining commercial property when compared with the

already permitted development, which would have virtually the same impact in terms of loss of light.

- 7.4.5. I concur with the planning authority in that the proposed development would not result in a diminution of visual amenity or cause undue overshadowing to the Red Cow House or adjacent premises above that of the granted development under Reg. Ref. SD17A/0211.

7.5. Development Contributions

- 7.5.1. The first party appeal is in relation to the incorrect application of the South Dublin County Development Plan Development Contribution Scheme 2016-2020. I consider that to assess whether the development contribution scheme has been applied correctly, the following questions need to be addressed:

- *Does Article 10 (xxviii) apply to the proposed development?*
- *Were development contributions paid for the existing commercial/industrial buildings on the site?*
- *What is the relevant reduction in development contribution?*

7.5.2. Does Article 10 (xxviii) apply to the proposed development?

The South Dublin County Development Plan Development Contribution Scheme 2016-2020 sets a contribution for development described as 'industrial/commercial' at €79.73 per square metre. 'Exemptions and Reductions' are set out in Article 10 of the Scheme. Article 10 (xxviii) states:

"Demolition and Rebuild: Where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be calculated as follows;

- iii. where a contribution has been paid – the contribution will be levied on the increased floor area of the new build over the old
- iv. if no contribution was previously paid - the contribution will be levied on the new development in full

The Development Contribution Scheme does not provide for any rebate or refund in this regard. Agents/applicants should provide evidence of prior payment at application stage in order to expedite assessment and avail of this exemption.'

The proposed development involves the demolition of a commercial building (partly in use as a motor repair centre) to construct an office building. Both uses fall under 'industrial/commercial'. As such I would consider that the correct assessment of the contribution is a net floorspace – i.e. the proposed additional floorspace minus the floorspace to be demolished.

7.5.3. Were development contributions paid for the existing commercial/industrial buildings on the site?

The applicant has submitted copies of correspondence between the original developer and the planning authority of the time, Dublin County Council, with regard to planning permission Reg. Ref. SA123 for a workshop and stores and Reg. Ref. 90A-2152 for a two storey store extension with receipts and formal acknowledgements of proof of payment of contributions. This proposal is quite clearly the Coby premises building which is to be demolished.

The applicant outlines that application Reg. Ref. SD17A/0211 which included the demolition of the existing Coby Autos premises (Units B, C and D) comprising 1,590sqm was not taken into consideration by the planning authority when calculating the contribution levies to that permission.

In any event I am quite satisfied having examined the documentation on file that the financial contribution conditions attached to P.A. Reg. Ref. SA123 and 90A-2152 have been discharged.

7.5.4. What is the relevant reduction in development contribution?

The applicant submits that the planning application subject to this appeal should be levied on the basis of a net additional floor area of 5,276sq.m. (6,866sq.m. minus 1,590sq.m.). The amount of contribution should therefore be €79.73 by 5,276

sq.m.=€420,655.48 not €547,426.18 as stated in Condition No. 23 of P.A. Reg. Ref. SD18A/0061.

I conclude that a financial contribution has been paid for the Coby premises and that as such the exemption set out Article 10 (xxviii) of the Scheme applies, so the development contribution under the scheme should be the gross floor area proposed minus the area to be demolished (i.e. the 'Coby' building). I therefore conclude that the development contribution scheme has not been applied correctly by the planning authority.

7.6. Other Matters

- 7.6.1. *Traffic and Car Parking* – The appeal site forms part of the overall Red Cow Inn Complex which includes a significant area of surface car parking. As part of the current proposal it is proposed to locate 18no. car spaces and 20 bicycle spaces at surface level to the east of the proposed office building.
- 7.6.2. I have had regard to the Traffic Impact Assessment (TIA) submitted with the application which sets out the intention to update the Mobility Management Plan applied to the existing Red Cow Hotel Complex and the subject site under the previous proposal. It is noted that it is intended to control the extent of trips generated by the current proposal by restricting the extent of parking within the site and to operate controlled pay parking within the remainder of the Red Cow Complex parking area. Essentially it is intended to regulate trip generation by encouraging the use of nearby public transport links similar to that previously proposed.
- 7.6.3. As already noted above the subject site is within 800m of the existing Red Cow Luas stop, and the proposed installation of a new lift to the existing pedestrian and cycle footbridge, will improve universal access to the Luas station and adjoining bus routes. In light of the proximity of the site to the Red Cow Luas stop and, and having regard to existing nearby Dublin Bus Quality Bus Corridor (QBC) along the Naas Road and Regional bus services, including bus services to Dublin Airport, it is clear that the site is well served by public transport.
- 7.6.4. I consider that the car parking provision and implementation of a Workplace Travel Plan is acceptable having regard to Policy ET1 Objective 6 and TM7 Objective 1 of

the County Development Plan. I also note the proposed parking arrangements, were acceptable to the Transportation section of the planning authority and the TII.

- 7.6.5. A number of conditions attached to the grant of permission by the planning authority relate to the provision of and management of car parking including the requirement to submit a Workplace Travel Plan. I am satisfied that similar conditions should be attached to the current proposal.
- 7.6.6. *Archaeology* – I note the appeal site is located in proximity to Recorded Monument DU017-077 described as earthwork, possible site. I also note the DAU of the Department of Culture, Heritage and the Gaeltacht, An Taisce, and The Heritage Council did not comment on the application. Notwithstanding the brownfield nature of the site, I do consider it appropriate given the excavation works required to construct the development and in particular the basement, to attach standard conditions in relation to archaeological monitoring.
- 7.6.7. *Legal Rights* – A right of way is indicated on the site layout plan submitted with the application which runs along the gable of the existing premises on site including the Red Cow House to the north. The right of way is indicated to the north from the Naas Road to the entrance to the appeal site from the south.
- 7.6.8. I have no reason to conclude that the applicant in this instance does not have sufficient legal interest in the lands in question to carry out the proposed development. If there are any discrepancies in relation to landownership, this is a legal matter to be determined between the parties involved. If indeed there are any discrepancies or disputes in respect of landownership this in my view should not preclude the Board from considering granting planning permission in this instance. I refer the Board to Section 34(13) of the Planning and Development Act, 2000 (as amended) which states ‘that a person shall not be entitled solely by reason of a permission under this section to carry out any development’. Therefore, the Board could grant planning permission for the proposed development and any subsequent legal disputes which arise in respect of land ownership can be addressed prior to carrying out the development.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

7.8. Environmental Impact Assessment

- 7.8.1. Having regard to the nature the proposed development, the nature of the receiving environment, and proximity to the nearest sensitive location, 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 permission be granted.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, to the zoning of the site in the South Dublin County Development Plan 2016-2022 and the proximity of public transport facilities, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area, would be acceptable in terms of traffic safety and convenience and would be in accordance with the provisions of the South Dublin County Development Plan 2016-2022. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

I consider the South Dublin County Council Development Contribution Scheme 2016-2020 has not been applied correctly by the planning authority.

10.0 Conditions

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

Reason: In the interest of clarity.

2. The relevant conditions of the previous permission Reg. Ref. SD17A/0211 shall apply, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of the proper planning and sustainable development of the area.

3. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

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

Reason: In the interest of public health.

5. Details of all external signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of amenities of the area and visual amenity.

6. The developer shall comply with all requirements of the planning authority in relation to roads, access, lighting and parking arrangements, including facilities for the recharging of electric vehicles.

Reason: In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity.

7. Details for the proposed left and stairs (granted as part of Reg. Ref. SD17A/0211 and how it ties into the existing pedestrian bridge over the Naas Road, shall be submitted to, and agreed in writing with, the planning authority and Transport Infrastructure Ireland (TII) prior to commencement of development.

Reason: In the interest of improving public access to public transport.

8. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following: -
 - (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
 - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
 - (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
 - (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

9. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

10. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

11. Prior to commencement of development, the developer shall liaise with the Irish Aviation Authority with regard to the potential requirement for an aviation warning beacon.

Reason: In the interests of public safety.

12. Proposals for development name, and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility.

13. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the proposed development is made available for occupation.

Reason: In the interest of public safety and visual amenity.

14. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

15. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

16. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to the Board for determination.

Reason: To ensure the satisfactory completion of the development.

17. The developer shall pay to the planning authority a financial contribution of €420,655.48 (four hundred and twenty thousand, six hundred and fifty five euro and forty eight cents) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made

under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

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

Susan McHugh
Planning Inspectorate

11th October 2018