

An
Bord
Pleanála

S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016

Inspector's Report
ABP-308533-20

Strategic Housing Development

Alterations to previously permitted development Reg.Ref:2186/15 (PL29S.245164) increasing the total number of units from 220 no. units to 248 no. units.

Location

St. Clare's Convent and No's. 115-119 Harold's Cross Road, Harold's Cross, Dublin 6W.
(www.stclaresshd.ie)

Planning Authority

Dublin City Council South

Applicant

St. Clare's GB3 Limited

Prescribed Bodies

Irish Water
National Transport Authority

Department of Culture, Heritage and
the Gaeltacht

An Taisce

Heritage Council

An Comhairle Ealaíon

Fáilte Ireland

Dublin City Childcare Committee

Observer(s)

Anne Jennings;

Anne Walsh;

Breda Brown;

Christine Kirwan & Others (2

submissions, first in relation to the
application, second in relation to LVA);

Enda Berson;

Harold's Cross Village Community
Council;

Mr & Mrs Neville Gough;

Noeleen & James McCann;

Norah Campbell;

Paul Walsh;

Shane Walsh & Derek Deely.

Date of Site Inspection

12th January 2021

Inspector

Rachel Gleave O'Connor

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1.0 Introduction

- 1.1. This is an assessment of a proposed strategic housing development submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.
- 1.2. Pursuant to Board Direction BD-007141-20 an Oral Hearing was held on 20th January 2021. A limited Agenda was issued to all parties and the specific items addressed in the Oral Hearing were as follows:
 1. The Landscape and Visual Assessment (LVA), and, inter alia, to consider the requirement for additional viewpoints and photomontages such as the view from Leinster Park, and any further or possible visual impacts on existing residents as outlined in submissions received, and
 2. The Sunlight and Daylight Analysis, so as to clearly demonstrate compliance with BRE Guidelines and to further consider other technical points raised in the various technical expert reports applicable in respect of this issue. The applicant is requested to comprehensively consider the potential impact on existing and future residents as a result of the proposed development.

2.0 Site Location and Description

- 2.1. The application site is located on the eastern side of Harold's Cross Road, east of Harold's Cross Park (open space) and north of a residential estate at Leinster Park. The site is approximately 350m south of the Grand Canal and outside of the inner city canal ring. The area is characterised by residential properties, with a 2 storey appearance prevalent to properties on Harold's Cross Road. A number of 3 storey properties also feature in the area.
- 2.2. To the north east, the site is bounded by St Clare's Convent National School and grounds. Properties fronting Harold's Cross Road are located to the north west of the site, with the rear gardens to a limited number of properties adjoining the subject site boundary. To the west, the site largely fronts onto Harold's Cross Road, however this is interrupted for a section towards the south west of the site where it hugs the boundary with an existing 3 storey residential block known as Parkview. To the south the subject site bounds 2 storey residential properties and cul-de-sac areas for

Leinster Park. While to the east the site bounds the rear of properties on Mount Drummond Square.

- 2.3. The site itself is occupied by a development under construction, as previously approved and described below in the Planning History section 4 of this report. Construction works are advanced, with blocks constructed up to 4 and 5 storeys in height.

3.0 Proposed Strategic Housing Development

- 3.1. The proposed development consists of the alteration of Blocks E, F, and G, currently under construction.

- Block E shall be part 5 and part 6 storeys. It shall include 72 no. apartments (16 no. 1 bed, 39 no. 2 bed, and 17 no. 3 bed units). Additional 7 No. Units.
- Block F shall be part 4, part 5, and part 6 storeys and shall include 57 no. apartments (13 no. 1 bed, 38 no. 2 bed, and 6 no. 3 bed units). Additional 9 No. Units.
- Block G shall be 6 storeys in height. It shall include 68 no. apartments, with 12 no. 1 bed, 46 no. 2 bed, and 10 no. 3 bed units. Additional 12 No. Units.

- 3.2. The total number of units proposed under this application is 197. The total no. of apartment units on site, including permitted Blocks A, B, C, D, J1, and J2, will increase from 220 no. to 248no.

- 3.3. The application contains a statement setting out how the proposal will be consistent with the objectives of the Dublin City Development Plan 2016-2022.”

- 3.4. The proposed development is accompanied with a Material Contravention Statement which sets out justification for the proposed development that materially contravenes *Section 16.7 – Building Height in a Sustainable City* in the Dublin City Development Plan 2016-2022: The site is located in the Outer City, where a height of up to 16m is permitted. This is stated in the Newspaper Notice.

- 3.5. The following tables set out some of the key elements of the proposed scheme:

Table 1: Development Standards

Site Area	1.7 ha
No. of units	From 220 to 248 an increase of 28 no. units
Total Gross Floor Area	16,182.9 sq. m
Gross Density	146 units/ha
Plot Ratio (stated)	1.46
Site Coverage	30.75%.
Proposed communal amenity space and PAS	1,688 sq. m (Communal Open Space is calculated as 5 sq. m for a 1 bed unit, 7 sq. m. for a 2 bed unit, and 9 sq. m for a 3 bed unit).
Public Open Space	Required Proposed
	20% 8,558.5 sq. m (50%)
Childcare Facility (no. of childcare spaces 50 – 85)	254.4 sq. m

Table 2: Proposed overall unit breakdown with blocks altered under this application highlighted in bold text

Block	Status	No. of Units			Total
		1-bed	2-bed	3-bed	
Block A	Permitted	0	2	3	5
Block B	Permitted	1	2	4	7
Block C	Permitted	1	5	0	6
Block D	Permitted	9	1	0	10
Block E	Permitted	16	39	17	72
Block F	Permitted	13	38	6	57
Block G	Permitted	12	46	10	68
Block J	Permitted	12	11	0	23
Total		64	144	40	248

Table 3: Unit Mix

Apartments	1 bed	2 bed	3 bed	Total

	64 (26%)	144 (58%)	40 (16%)	248 (100%)
Dual / triple Aspect				58%
Single Aspect				48%
% of units that exceed the minimum size requirements				100%

Table 4: Building Height of Blocks Altered under this Application

Block	Permitted storey	Proposed storey	Max Height m
E	5	5 – 6	19.6
F	3 – 5	4 – 5 – 6	19.6
G	5	6	19.6

Table 5: Car Parking

	Number of car parking spaces
Proposed for 248 Apartments	No additional spaces are proposed under this application. 160 No basement car parking spaces permitted. 153 spaces to be allocated for residential car parking equating to 0.62 spaces per apartment. 4 car club spaces, 3 creche staff spaces (at basement) and 4 set-down spaces (at surface) will serve the development.

Table 6: Bicycle Parking

Bicycle parking spaces	283 No. proposed An increase of 57 on the already permitted 226.
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Table 7: Part V

Proposed	25 units (10 % of the 248 no. units proposed)
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- 3.6. In term of site services, the proposed development is a standard connection, requiring no network or treatment plant upgrades for water or wastewater by either

the customer or Irish Water. No third-party consents are required for these connections. Irish Water submission on file confirms that subject to a valid connection agreement being put in place between IW and the developer, the proposed connections to the IW network (s) can be facilitated.

4.0 Planning History

- 4.1. There is quite a protracted and complex site history on the subject site:
- 4.2. **ABP 305728-19** An Bord Pleanála made a decision by order dated 14th February 2020. Following an application for Judicial Review to the courts, that decision was quashed by order of the High Court perfected on the 27th October 2020 and the case was remitted by that Court back to An Bord Pleanála to again determine the planning application. The current application ref. ABP 308533-20 forms the subsequent assessment as required under that court order.
- 4.3. **ABP 301835-18** (Reg Ref 4040/17) (Granted 26th October 2018)
- 4.4. Amendments to previously permitted development Reg. Ref. 2186/15 (An Bord Pleanála Ref.: PL29S.245164) as amended by Reg. Ref. 2825/17 to include an addition floor level on Blocks E, F & G associated elevation changes, alteration to the basement and removal of 2 apartment units in Block G to accommodate a crèche and all associated works.
- 4.5. **ABP 301600-18** (Reg Ref 3781/17) (Granted 26th October 2018)
- 4.6. Demolition of No 115-119 Harolds Cross Road and the construction of two Blocks, J1 & J2.
- 4.7. Amendments to Reg. Ref: 2186/15 (PL29S.245164) amendments to Block D1 to consist of the replacement of previously proposed office area (conditioned by An Bord Pleanála for community use under Condition 4 of An Bord Pleanála Ref: PL 29S.245164) and 3 no. previously permitted residential units (1 no. 1 bed, 1 no. 1 bed plus study and 1 no. 2 bed) in Block D1 with resident's amenity facilities comprising of: a concierge, residents lounge, multi-function room, meeting room and co-working spaces, gym with revised terrace at lower ground floor on northern elevation and associated facilities; manager's office; and all associated works (total tenant amenities floor space provided is c.396sqm). Minor elevational amendments

are also proposed as part of this application. This application will reduce the number of units in Block D from 13 no. to 10 no. resulting in an overall decrease from 156 no. to 153 no. residential units.

4.8. **Reg. Ref. 4544/17** (Granted 5th April 2018)

4.9. Permission Granted for amendments to the residential development permitted under Reg. Ref: 2186/15 (An Bord Pleanála Ref: PL29S.245164) at a site of c.245sqm (c.0.02ha.) within the overall c.1.7 ha site located at the former St. Clare's Convent and No's 115-119, Harold's Cross Road, Harold's Cross, Dublin 6. PROTECTED STRUCTURE: The application site includes Protected Structure RPS Ref. No. 3583. The proposed development comprises amendments to Block D1 of the permitted St. Clare's development to consist of the replacement of previously proposed office area (conditioned by An Bord Pleanála for community use under Condition 4 of An Bord Pleanála Ref: PL 29S.245164) and 3 no. previously permitted residential units (1 no. 1 bed, 1 no. 1 bed plus study and 1 no. 2 bed) in Block D1 with resident's amenity facilities comprising of: a concierge, residents lounge, multi-function room, meeting room and co-working spaces, gym with revised terrace at lower ground floor on northern elevation and associated facilities; manager's office; and all associated works (total tenant amenities floor space provided is c.396sqm). Minor elevational amendments are also proposed as part of this application. This application will reduce the number of units in Block D from 13 no. to 10 no. resulting in an overall decrease from 156 no. to 153 no. residential units.

4.10. This application replaced 3 permitted units with residents' amenities in the Block D, the Chapel, a Protected Structure. This reduced the number of permitted units to 220 no.

4.11. **ABP-300031-17** (Reg Ref 2825/17) (date of grant 12/04/2018)

4.12. Modifications of a previously permitted development PL29S.245164 (Reg Ref 2186/15) for an increase in units and reconfiguration and elevation amendments at Blocks E, F and G and reconfiguration of basement car park providing for increase in parking spaces and associated site works.

4.13. Condition No 1 required compliance with Condition No 4 of the parent permission Reg Ref 2186/85 (PL29S.245164) and "community related purpose".

- 4.14. Reg Ref 2826/17
- 4.15. Replacement of three residential units with residential amenity facility including concierge, residents lounge, multi- function room, meeting room, co working space, gym and associated facilities. Block D would be reduced to 10 units instead of 13 and the overall units within the development would decrease from 156 to 153. Appeal PL248916 was withdrawn.
- 4.16. **PL29S.245164** (Reg Ref 2186/15) (granted 16/11/2015)
- 4.17. 156 apartments in six blocks (Block A-G). Block C includes the change of use of the former Bethany Orphanage to 6 residential units. Block D comprises a change of use of convent to 13 units. The nun's chapel is to be converted to a residential building and the main chapel and office. A basement carpark includes 155 car parking spaces.
- 4.18. Condition No 2- Block H shall be omitted and replaced with a proposal for a revise area of public open space.
- 4.19. Condition No 3- Block J shall be omitted and any redevelopment shall be the subject of a separate planning application.
- 4.20. Condition No 4- The proposed mezzanine in the chapel omitted and the chapel used for community related purpose and not office.
- 4.21. Condition No 9 All trees to be retained within the site unless specifically authorised by the planning application.

5.0 Section 5 Pre Application Consultation

- 5.1. A Section 5 pre-application consultation took place at the offices of An Bord Pleanála on the 12th September 2019. Representatives of the prospective applicant, the planning authority and An Bord Pleanála were in attendance.

In the Notice of Pre-Application Consultation Opinion dated October 2019 (ABP Ref. ABP-305051-19) the Board stated that it was of the opinion that the documentation submitted with the consultation request under section 5(5) of the Act would constitute a reasonable basis for an application for strategic housing development. Copies of the record of the meeting and the Inspector's report are on file Ref. ABP-305051-19.

5.2. Applicant's Statement

5.3. The application includes a statement of response to the pre-application consultation (Statement of Response to ABP's Opinion), as provided for under section 8(1)(iv) of the Act of 2016, which may be summarised as follows:

- Item No. 1: Tenure, Drawings of Permitted Development

5.4. The proposed development is a 'Build to Sell' development, intended for owner occupation or individual lease.

5.5. The reason for confusion over the issue of tenure arises from the planning history of the site. The planning history for the site is quite complex, reflecting the changes in planning policy legislation and the market that have occurred since permission was granted on the site in 2015. The first permission, DCC Reg. Ref. 2186/15, PL29S.245164, was for 209 units. Only 156 units were permitted, as two blocks were omitted by way of condition. The decision facilitated a new application for one of the blocks, Block J. The scheme was designed at a time when Dublin City Council policy required that 85% of all residential units were to be dual aspect and single aspect units had to face south or west. The result was that generally only 3 apartment units could be provided around a core. This rendered the project uneconomic to develop.

5.6. The next application, DCC Reg. Ref. 2825/17, ABP 300031-17, sought to take advantage of both the Sustainable Urban Housing Guidelines; Design Standards for New Apartments: Guidelines for Planning Authorities 2015 and new legislation. The application was for the reconfiguring of the permitted apartments within roughly the footprint and an increase of 16 units, to avail of the increase in units permitted around a core and the reduction to 50% of apartments to be dual aspect units. The application was brought forward under Section 34.3.A of the Planning and Development Act, 2000, as amended, which allows a planning application to be made, seeking to amend the development to comply with government guidelines. DCC were of the view that as the alterations in the layout gave rise to a new pattern of fenestration, then the application should be dealt with under the normal S.34 planning application process. Although granted by DCC, third party appeals carried the decision to An Bord Pleanála, which also granted permission.

5.7. The Sustainable Urban Housing Guidelines; Design Standards for New Apartments: Guidelines for Planning Authorities 2015 brought in a new category of tenure – "Build

to Let". This tenure could avail of an increased number of one bedrooms and studio units in certain locations and allowed for communal facilities to be applied.

- 5.8. At the time of the application, there was no debt funding available from Irish sources to build apartments, for non-NAMA sites. Therefore, the developer sought international capital to finance the development of the site. International institutional funders were interested in the "Build to Rent" or Private Rental Schemes. However, these schemes require more communal facilities than would normally be provided in the traditional "Build to Sell" model. The developer recognised that the former chapel in St. Clare's would fit the requirement for communal amenity space while providing the Protected Structure with an appropriate use. DCC Reg. Ref. 2826/17 sought the replacement of 3 no. residential units in Block D of Former Convent, with Resident's Lounge, multi-function room, gym with revised terrace, and manager's office.
- 5.9. While DCC granted planning permission for this, conditions were attached to make the tenure of the scheme "Build to Rent". This had a detrimental impact on the avenue of potential funding for the development of the scheme. Although initially appealed, it was decided to withdraw the application, on the basis that the slate, from a planning perspective, could be wiped clean and the "Build to Rent" conditions expunged.
- 5.10. However, when the next application was made, DCC Reg. Ref. 3781/17, ABP 301600, for Block J1 and J2, the planning history included the withdrawn application and the scheme was referred to as a "Build to Rent" development. DCC granted the permission but did not include the "Build to Rent" conditions in the order. When the development was under appeal, the *Sustainable Urban Housing Guidelines; Design Standards for New Apartments: Guidelines for Planning Authorities 2018* was published. This set new requirements for the "Build to Rent" tenure, including the need for the tenure to specified in the public notice and that the development is to be held in a single ownership for 15 years. This tenure could avail of an unlimited mix of units, all units to minimum floor areas and no limit to the number of units on a core. The scheme under consideration did not have any of these characteristics. However, because of the statement in the DCC report, the Inspector assumed that the scheme was a "Build to Rent" and attached the conditions brought in under the 2018 Guidelines. The same conditions were attached to DCC Reg. Ref. 4040/17, ABP 301835-18.

- 5.11. The error in the order was corrected by An Bord Pleanála under Section 146A of the Planning and Development Act, 2000, as amended and the three “Build to Rent” conditions were removed from both orders.
- 5.12. The scheme is currently under construction. It is not a “Build to Rent” development. The provision of residents’ amenity facilities are now becoming the industry norm. To remain competitive in the apartment market, these facilities are standard for large scale developments, to form part of the offer for future residents.
- 5.13. The scheme has reduced the ratio of car parking over time, from a 1 unit per car parking space to 1 unit per 0.62 car parking space. The ability to do so reflects the site’s proximity to public transport, cycling facilities and the city centre. In comparison, “Build to Rent” schemes typically have a car parking ratio of 1 unit to 0.3 car parking spaces or less.
- 5.14. This SHD application has not been advertised as a “Build to Rent” scheme. Most of the apartments are above minimum floor area and there is a mix of one, two- and three-bedroom units. The proposed development is a “Build to Sell” development.
- 5.15. A full suite of drawings has been submitted with the application on the permitted development, for information purposes. For clarity, no other changes than those described in the public notice are proposed. The access, ramps and size of basement all remain unchanged. The communal and public open space are unchanged. There is no increase in the creche size or the resident’s amenity facilities. Blocks A, B, C, D, J1 and J2 are not being altered by this permission.
- 5.16. In regard to the basement, the basement structure is not being changed. Physically, there is sufficient space for the additional waste being generated and additional bicycle parking.
- 5.17. The footprint of Blocks F and G are unchanged. However, in Block E, there is an enlarged stairwell. The fenestration of Blocks E, F and G will remain in the same rhythm and approach currently permitted. There are additional balconies as can be seen on BKD’s Drawing 6162-D-PL048.
- Item No. 2: The selection rationale for the proposed building finishes and materials, specifically for upper storeys.

5.18. The submitted Architect's Design Statement responds to this and includes in Section 13 a Material Study.

- Item No. 3: Daylighting, overshadowing and overlooking.

5.19. A Daylight and Sunlight Report has been submitted with the application.

- Item 4 – Changes in levels

5.20. Levels are shown in the site section drawings submitted and reflect the permitted scheme.

- Item 5 – Mobility Management Strategy

5.21. An outline Mobility Management Plan is submitted with the application.

- Item 6 – Areas to be taken in charge

5.22. No areas are to be taken in charge, so a drawing has not been submitted

- Item 7 – Housing Quality Assessment

5.23. A Housing Quality Assessment is submitted with the application.

- Item 8 – Surface water management including green roofs

5.24. An Engineering Services Report has been submitted and section 3 of the report describes SUDs and green roof systems proposed in the development.

- Item 9 – Building Life Cycle Report

5.25. A Building Life Cycle Report has been submitted with the application.

6.0 Relevant Planning Policy

6.1. National Policy

6.1.1. Having considered the nature of the proposal, the receiving environment, the documentation on file, including submission from the planning authority, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009) (the 'Sustainable Residential Development Guidelines').
- Design Manual for Urban Roads and Streets (DMURS) (2019).

- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020) (the 'Apartment Guidelines').
- Urban Development and Building Height, Guidelines for Planning Authorities (2018) (the 'Building Height Guidelines').

Other relevant national guidelines include:

- Project Ireland 2040, National Planning Framework.

6.2. Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031 (RSES-EMR)

The primary statutory objective of the Strategy is to support implementation of Project Ireland 2040 - which links planning and investment through the National Planning Framework (NPF) and ten year National Development Plan (NDP) - and the economic and climate policies of the Government by providing a long-term strategic planning and economic framework for the Region.

- RPO 3.2 - Promote compact urban growth - targets of at least 50% of all new homes to be built, to be within or contiguous to the existing built up area of Dublin city and suburbs and a target of at least 30% for other urban areas.
- RPO – 4.1 – Settlement Hierarchy – Local Authorities to determine the hierarchy of settlements in accordance with the hierarchy, guiding principles and typology of settlements in the RSES.
- RPO 4.2 – Infrastructure – Infrastructure investment and priorities shall be aligned with the spatial planning strategy of the RSES.
- RPO 4.3 -Consolidation and Re-Intensification- seeks to support the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.

- RPO 4.3 – Dublin City and Suburbs, Consolidation and Re-intensification- Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.
- The site lies within the Dublin Metropolitan Area (DMA) – The aim of the Dublin Metropolitan Area Strategic Plan is to deliver strategic development areas identified in the Dublin Metropolitan Area Strategic Plan (MASP) to ensure a steady supply of serviced development lands to support Dublin's sustainable growth.
- Key Principles of the Metropolitan Area Strategic Plan include compact sustainable growth and accelerated housing delivery, Integrated Transport and Land Use and alignment of Growth with enabling infrastructure.
- Section 9.2 Diverse and Inclusive Region, notes that changing household formation trends will require a range of housing typologies including student housing, smaller units, shared living schemes and flexible designs that are adaptive for people's full life cycle to meet their housing needs today and into the future.

6.3. Local Policy

6.4. The key provisions of local planning policy relating to the proposed development are set out in the Dublin City Development Plan 2016-2022 (including variations).

6.5. The northern half of the subject site is zoned **Z12** with the southern portion of the lands zoned **Z1**. The objective for **Z12** lands is "to ensure existing environmental amenities are protected in the predominantly residential future use of these lands". The objective for **Z1** lands is "to protect, provide and improve residential amenities". Residential is a permitted in principle use in **Z12** and **Z1** lands. The vision for residential development in the city is one where a wide range of accommodation is available within sustainable communities where residential areas are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where

adequate public transport provides good access to employment, the city centre and the key district centres.

- 6.6. The Chapel Building on site, (Block D) is listed as a protected structure. The subject application does not propose any works to the protected structure. There is a zone of archaeological interest which incorporates the western boundary of the site.
- 6.6.1. The policy chapters of the Dublin City Development Plan 2016-2022, - especially Chapters 5 – Quality Housing and 12 – Sustainable Communities and Neighbourhoods, detailing the policies and objectives for residential development, making good neighbourhoods and standards respectively, should be consulted to inform any proposed residential development (Chapter 16 deals with Development Standards: Design, Layout, Mix of Uses and Sustainable Design. Section 16.7.2 deals with Height Limits and Areas for Low-rise, Mid-Rise and Taller Development, Section 16.10 – Standards for Residential Accommodation).

7.0 Statement of Consistency

- 7.1. The applicant has submitted a Statement of Consistency as per Section 8(1)(iv) of the Act of 2016, which indicates how the proposal is consistent with the policies and objectives of National Planning Framework, Section 28 Guidelines and the City Development Plan and I have had regard to same. The following points are noted:
- The proposed development has a maximum height of 24.25m ([sic] *note drawings show maximum height as 19.615m*) while the Development Plan currently states that a maximum building height of 16m is permissible on the site. However increased height is suggested to be suitable in accordance with SPPRs under the Building Height Guidelines and National Policy approaches to densification of appropriate urban sites. A Statement of Material Contravention has been submitted with the application in relation to this matter.
 - The site coverage for the proposed development is 30.75%, unchanged from the level permitted on the site. The Development Plan gives indicative site coverage for Z1 land as 45-60% and Z12 land as 50%.

- A description of potential overshadowing, overbearing and overlooking impacts is provided, with a conclusion that the proposed development does not significantly add to impacts over that already permitted.

8.0 Third Party Submissions

8.1. 12 no. letters of objection have been received from the parties listed at the front of this report. The issues are summarised below.

Residential Amenity

- Negative overbearing impact upon residents of Mount Drummond Square.
- Diminish daylight.
- Overshadowing of gardens and properties.
- Block F is set back 7.042 meters at the closest point from the boundary wall to Mount Drummond Square rear gardens.
- Size and scale (6th Floor) inappropriate, proposal will exacerbate overshadowing of dwellings at Mount Drummond Square during spring to summer months.
- Height and its impact by way of overshadowing was a concern in earlier planning applications on this site. While the Boards Inspector in the case of Reg. Ref. 4040/17 ABP 301835 considered the 5th floor should be removed from Blocks D and F, this condition was removed by the Board in the final order.
- Cumulative negative impact of the permitted and the additional proposed development (6th Floor) on the residential amenity of a number of homes in Mount Drummond Square.
- In particular, the additional floor proposed on Block F and G should be omitted due to overshadowing, overbearing and overlooking impact.
- Additional 6th floor is entirely unacceptable.
- Loss of privacy – overlooking.
- Trees along the southern boundary have been removed / have not been provided to prevent overlooking and protect privacy as proposed. Subject to enforcement action by Dublin City Council.

- Similar applications in the area should be considered and the precedent set to protecting existing residential amenity in the Briargate and Garavagh developments should be observed here.
- Design of the development, configuration of windows and height would adversely overlook existing dwellings in Mount Drummond Square and Leinster Park.
- Developer has not engaged with residents requests for tree planting or obscure glazing to mitigate amenity impacts.
- Cumulative impact on residential amenity of the overall development has not been considered.
- The proposed development does not comply with day light standards.
- Substandard development should not be allowed to facilitate excessive heights
- BRE Guidelines apply to all development and should not be allowed to be ignored.
- Current development constructed on the site has reduced residential amenity and the proposal will exacerbate this.

Visual Amenity

- 6th floor height is unacceptable
- Totally out of character with the surrounding area.
- No other examples of six floor housing units beside two storey houses in the area.
- Western elevation of Block G presents a blank façade to the street.
- Inappropriate scale and incongruous development form as viewed from Harold's Cross Road.
- The proposal is not responding to the local built environment and detracts from urban neighbourhood.
- Visualizations of the development from the rear of Mount Drummond Square are misleading when compared to works already carried out on the site, and a further storey will add to the negative impact.

- Landscape and visual impact assessment is not available on the website for viewing.
- Detract from the character of the streetscape and the setting of Protected Structures.
- Visual Impact of the proposal is substandard and inadequate.
- No views or photomontages have been included from Leinster Park where there will be impact from the development.
- The Landscape and Visual Impact Assessment is flawed. No categorisation of significance, no justification for views chosen, the assessed impact on Mount Drummond Square and residents within 100m is not credible, no assessment of visual impact on residents in Leinster Park and Mount Drummond Square.

Land Use Zoning

- Transitional zone and the height is inappropriate to the rear of the site where it adjoins existing traditional two storey residential area.
- Unacceptable abrupt transition that conflicts with the Development Plan.

EIAR

- The need for EIAR has not been given appropriate consideration.
- Piecemeal development unacceptable.
- Impact of the development upon human health
- The dwellings of surrounding residents are demonstrable sensitive environmental features.
- The impact of 248 units needs to be assessed and not just the up lift of 28 units.

Excessive Density

- 145 units / ha is city centre density.
- The density is not justified in terms of public transport available.
- Developer is clearly seeking to maximise profit.
- Previous Inspector assessments for the site refer to excessive density, where levels were lower than the current application proposal.

Traffic / Car Parking

- There is a need for an assessment of the cumulative impact of the overall development on traffic.
- Negative impact upon car parking in the area and congestion in the area.
- Negative knock-on effect to wider area from under provision of car parking.

Material Contravention

- No policy basis that the significant increase in building height can be justified.
- The proposal materially contravenes the Development Plan.
- No basis in law to allow An Bord Pleanála to permit a material contravention
- Section 37 (2) (b) relates to an appeal regarding a planning authority refusal. This is not an appeal against a refusal by a p.a.

Other

- Inadequate level of childcare facilities to support the development.

Submitted attachments include: Photos from the rear of 49 and 50 Mount Drummond Square of construction on subject site November 2011; Comparison photos and visualization drawing view of development from rear of 41, 43 and 47 Mount Drummond Square; Inspectors Report Reg. Ref. 4040/17 ABP Ref.301835-18; Summary of three applications of similar context; Photographic Views from the rear of properties on Mount Drummond Square; 3D Views issued to residents of Mount Drummond Square by the applicant.

9.0 Planning Authority Submission

- 9.1. Dublin City County Council has made a submission in accordance with the requirements of section 8(5)(a) of the Act of 2016. It summarises observer comments as per section 8(5)(a)(i). The planning and technical analysis in accordance with the requirements of section 8(5)(a)(ii) and 8(5)(b)(i) may be summarised as follows.

General/Principle

- Principle of residential development has been established on the site.

Density/Height

- The proposed density is considered appropriate given the context of the site in addition to development plan and national policy relating to increasing densities.
- Although Development Plan policy indicates heights of up to 16m, new national policy on building heights do allow for consideration of increased building height.
- The Planning Authority have no objection in principle to the proposed height of 19.615 as indicated on the drawings.

Design/Scale/Visual Impact

- The visual impact of the proposed development is acceptable. The scale of the development proposed can be accommodated at this location without detriment to the amenities of the area.

Impact on amenity of adjacent residential development

- The layout and design of the additional floors has in the main respected the amenity of properties in Mount Drummond Square and Leinster Park.
- The Planning Authority is satisfied that any additional overlooking from balconies on the new elevations will be minimal from that already on the permitted scheme.
- The proposal will not appear significantly overbearing from surrounding properties.
- The Planning Authority is satisfied that the proposal would be acceptable in the context of residential amenities of the adjoining properties.

Residential Amenity/Quality/Standards

- The proposed apartments comply or exceed minimum standards.

Open Space

- There is enough open space on the site to accommodate the additional 28 apartments.

Impact on Protected Structure

- The impact on the existing Protected Structure will be minimal given the set back of the sixth floor on Block E and the permitted development on the site.

Conclusion

- The alterations to the previously permitted development Reg. Ref. 2186/15 are considered acceptable.

9.2. Planning Conditions and Reasons

- 12 no. conditions are recommended if the Board considers it appropriate to approve the application. Those of note include:

Condition 1 and 2 – payment of a development contribution and inclusion of a bond condition; and condition 3 – the terms and conditions of permission granted under planning register reference number 2186/15, PL29S.24516 be complied with.

9.3. Departmental Reports

- Roads and Traffic Division: Report received it recommends a grant of permission and 11 no. conditions recommended.
- Drainage: No objections and conditions recommended.
- Parks and Landscape Services: No objections and conditions recommended.
- Housing Section: Report received dated 24.10.2019 and indicates no objection to a grant of permission. Standard condition requiring the applicant/developer to enter into an agreement in accordance with Part V of the Planning and Development Act 2000 (as amended) prior to commencement.

9.4. Elected Members

- A presentation of this Strategic Housing Development application was made to Dublin City Council South East Area Committee on 11th November 2019. Concerns were expressed regarding the piecemeal approach to development on the site, compliance with Part V raised, questioned the need for additional communal storage areas and requested that consideration be given to overlooking and overshadowing on Mount Drummond Square. A desire for more three bed units, creche and playground was also indicated.

10.0 **Prescribed Bodies**

10.1. Irish Water

10.2. Based upon the details provided by the developer and the Confirmation of Feasibility issued by Irish Water, Irish Water confirms that subject to a valid connection being put in place between Irish Water and the developer, the proposed connection(s) to the Irish Water network(s) can be facilitated.

11.0 Oral Hearing

11.1. Following Board Direction BD-007141-20 an Oral Hearing was held on 20th January 2021. Due to the covid-19 pandemic, the Oral Hearing was attended by members of An Board Pleanála in person at the Board's offices 20 Marlborough Street, and all other parties remotely via MS Teams.

11.2. The oral hearing formed the expansion of existing information in respect of Limited Agenda items, as follows:

1. The Landscape and Visual Assessment (LVA), and, inter alia, to consider the requirement for additional viewpoints and photomontages such as the view from Leinster Park, and any further or possible visual impacts on existing residents as outlined in submissions received, and

2. The Sunlight and Daylight Analysis, so as to clearly demonstrate compliance with BRE Guidelines and to further consider other technical points raised in the various technical expert reports applicable in respect of this issue. The applicant is requested to comprehensively consider the potential impact on existing and future residents as a result of the proposed development.

11.3. Oral Hearings do not require the publication of presentations or verbal submissions in advance, and under normal circumstances typically do not require or facilitate the submission of information following closure of the oral hearing. However, in order to give the third parties additional opportunity (noting their concerns due to the virtual nature of the OH) to make submissions, the Inspector's discretion was used to facilitate the written submissions of third parties for a short period thereafter (2 days). I am satisfied that every opportunity was given to third parties to participate in the process.

11.4. The Oral Hearing commenced at 10am and finished at approximately 3.30pm. The Oral Hearing was recorded, and I direct the Board to the full sound recording

available as part of file ref.308533-20. The hearing, in the main, comprised a verbal presentation with accompanying powerpoint presentations, on behalf of the applicant presented by John Spain (John Spain Planning Consultants), Paul Quinn (BKD Architects), Neil Furber (Pleydell Smithyman Landscape and Visual Appraisal), Patrick Field (OCSC Daylight and Sunlight). All presentations, drawings and reports were made available to all parties and accessible on the applicant's website.

- 11.5. Dublin City Council was represented remotely by Kieran Sweeney (Senior Executive Planner).
- 11.6. 4 no. observers attended the Oral Hearing remotely. Submissions and Closing Statements were made by Paul Walsh and Norah Campbell. Sean O'Brien also made a submission and Paula Russell made a Closing Statement on behalf of the Harold's Cross Village Community Council. The applicant also made submissions and a Closing Statement. Closing Statements from all parties reflect points made in their submissions and are not highlighted here. I have summarised both oral and written submissions received in further detail below.
- 11.7. Due to the Covid 19 Pandemic and associated restrictions. The applicant prepared presentations and accompanying documentation / reports dealing with the Limited Agenda issued. This package of information was made available on their website (www.stclaresshd.ie) on the morning of the day preceding the Oral Hearing (19th January 2021). During the course of the Oral Hearing, the applicant updated a number of the presentations to provide clarifications in response to questions posed. These addendum documents were presented at the Oral Hearing, with opportunity for questioning given to all parties. The documents were uploaded to the applicant's website prior to the closing of the Oral Hearing. To ensure that third parties who attended remotely, had every opportunity to participate as fully in the Oral Hearing as they would if they attended in person, additional time was allowed for written submissions to be presented to the Inspector in respect of the Oral Hearing matters raised. Submissions were required to be received by the Board within 2 working days of the hearing (by 5.30pm on Friday 22nd January 2021). Written submissions in respect of items on the Limited Agenda were only accepted and considered.
- 11.8. Following the Oral Hearing, 2 written submissions were made by Paul Walsh and Paula Russell (on behalf of Harold's Cross Community Council). A request for an

adjournment was made by Mr Walsh to allow observers further time to consider the addendum reports presented by the applicant. This request was made in light of the timeframe the applicant was permitted to prepare for the Oral Hearing compared to the timeframe given to observers to submit submissions.

11.9. I am satisfied that permitting observers to submit further written submissions up to 22nd January 2021 (2 days following the Oral Hearing), was sufficient time to consider the information presented by the applicant. The vast majority of this information was available to observers from the 19th January 2021, with further clarifications presented to observers and opportunity granted for question at the Oral Hearing. I also ensured that observers were given every opportunity to offer submissions or pose questions in relation to the documentation presented, and I invited questions from observers at several points during the Oral Hearing. I also adjourned the Oral Hearing several times to allow parties to reflect upon matters raised and ensure details presented as part of clarifications were fully uploaded to the applicant's website, prior to closing the Oral Hearing. The amended documents incorporating matters of clarification were uploaded to the applicant's website on the 20th January 2021 during the course of the Oral Hearing.

11.10. The purpose of this Oral Hearing was to establish matters of fact around the Limited Agenda items, and I am satisfied that I can comprehensively assess the proposed development based on the documentation submitted and the details clarified as part of the Oral Hearing. I am also satisfied that I fully understand the matters raised by observers through their submissions to the Oral Hearing and this also informs my assessment. As a result, I do not consider there to be sufficient reason to adjourn the determination of the application.

11.11. I note a submission from Mr Walsh relating to the statutory obligations of the Board in relation to the Oral Hearing. I am not clear what regulation Mr Walsh is referring to when he references a lack of statutory notice concerning publication on the Board's website. I have copies of the letter sent to notify all interested parties of the Oral Hearing sent on 10th December 2020 and available for inspection by the Board on file ref.308533-20. I am satisfied that the Board has met all statutory obligations with respect to notifying parties of the Oral Hearing for this case.

11.12. I provide a summary of submissions made to the Oral Hearing below.

11.13. Submission by John Spain, John Spain Associates, Planning Consultant on behalf of the applicant.

- Introduction to the applicant's presentations to be provided in response to the Limited Agenda items.
- Clarification that the reference to St Clare's Avenue in the original version of documents actually relates to Grosvenor Lane. The confusion has arisen due to the labelling on Google street maps. Views are provided from St Clare's Avenue which is located to the west of the site and Grosvenor Lane to the south of the site. Additional viewpoints are also provided from Leinster Park in response to the Agenda.
- In relation to the presentation relating to landscape and visual impact, the conclusions remain unchanged and therefore continue to support the submission in relation to the criteria under 3.2 of the Building Height Guidelines and the Statement of Consistency in relation to building height policy. The additional height up to 19.6m is significantly below the maximum height of a low rise building of 28m under the Development Plan. Overall, the height and scale does not give rise to any particular impact and mitigation is included. This is supported by the addendum documents provided for landscape and visual impact and daylight and sunlight.

11.14. In response to questions raised by observers:

- As part of assessing landscape visual impact, views have been taken from the street in accordance with practice guidelines. Sketch up views provided to residents do not form part of the planning application and they are not related to, or illustrate, the proposed development. Norah Campbell (observer) asserts that the sketch up views are directly relevant because it is about how the development is being presented overall.
- Details of tree planting will be expected to follow at a later date, and the particular location of evergreen and deciduous trees would be agreed with the Planning Authority. Paul Walsh (observer) requests that these details are provided at this time and as part of the Oral Hearing. John Spain continues, that this level of detail would be expected as part of a planning condition. Paul Walsh (observer) reasserts that the inclusion of these trees should have been taken into account,

and suggests that the reason they are not included is because of the negative effect they would have.

11.15. Submission by Paul Quinn, BKD Architects, Architect on behalf of the applicant.

- Description of the site provided, as well as the current permission under construction on the site and the proposed development under the current SHD application. The proposed scheme comprises additional floors to Blocks E, G and F as illustrated in a 3D view provided.
- Photomontages presented to illustrate the extent of additional floors proposed in the application. Results in an addition of 28 additional apartments, resulting in a total of 248 apartments.

11.16. Submission by Neil Furber, Pleydell Smithyman Limited, providing landscape and visual impact analysis on behalf of the applicant.

- Confirmation that the views and photomontages that represent these views, are taken from public areas, as it was not possible to access private amenity spaces during the Covid-19 Pandemic.
- Presentation relates to item 4 on the Limited Agenda. Description of the location of the observers to the application in relation to the site on Mount Drummond Square and Leinster Park.
- Explanation of the differences between the original and the addendum versions of the Landscape and Visual Assessment. The assessment of impact of the proposed development and additional height has been provided in the context of the permitted development which is being constructed on the site.
- Description of the photomontages provided and potential visual impact.
- View 8 demonstrates the view closest to no.'s 7-10 Leinster Park, it shows Block J2 and Block G under construction. There would be partial screening from boundary tree planting following completion. The effect on visual amenity of the additional floor is of low magnitude with slight adverse effect in addition to the approved scheme, so the overall impact is moderate adverse and takes into account the permitted development. Existing trees would be retained and there would be a belt of mitigation tree planting.

- View 9 demonstrates the view closest to no.'s 11-17 Leinster Park, it shows Block G at the end of the cul-de-sac. There would be some filtering by off site tree planting. Moderate adverse effect, with an overall slight adverse impact from the additional floor and expected growth of mitigation tree screening planting noted.
- View 10 demonstrates the view closest to no.'s 23-28 and 29-34 Leinster Park. Boundary tree planting both in the site and off the site that offer some filtering of the view. The additional floor represents a moderate adverse impact, with a slight adverse impact overall.
- Tree planting is a mix of evergreen and deciduous planting.
- View 11 from the end of Grosvenor Lane, impact is slight adverse with the additional floor.
- View 12 from the top end of Grosvenor Lane with junction with Mount Drummond Square, impact is negligible.
- View 13 from St Clare's Avenue to the west of the site and representative of some of the views from Harold's Cross Park. Most of the view is the permitted development. The additional floor will be visible centrally in the view. The assessment is not of the overall development and is purely of the additional floors proposed.
- Cross Sections provided to illustrate the view from gardens not accessible and therefore not represented in the photomontages.
- Section CC reflects the visibility from the rear gardens of no.7 Leinster Park. There are a number of mature trees in the rear gardens of dwellings in Leinster Park and there is substantial planting as part of the permitted scheme. This includes evergreen species that will provide a degree of year round cover, however acknowledge that in summer there would be further cover from deciduous trees in leaf. Section shows the growth of tree planting along the boundary in year 1, year 5 and year 10 and how this will impact visibility from rear gardens.
- At year 1 the planting would have some role in filtering those views, and as the years pass and the planting grows, that effect would increase.

- In relation to Mount Drummond Square, this is addressed as a number of objections came from there. Further photomontages were not considered necessary, as Views 6 and 7 originally provided are adequate for the assessment and the conclusions as per the original assessment remain unchanged. The effect is a moderate adverse impact, with the existing development and the proposals combined, and the additional floor assessed in isolation represents a slight adverse impact.
- Mitigation measures include opaque glass to balconies at south east and no private terraces at the southern end or northern end at 4th and 5th floor level in Block F. Several mature trees retained and substantial additional tree planting, that will be around 7 meters high at the time of planting, mainly deciduous. Views will therefore be less restricted in winter but branches will still offer some filtering of views. A hedgerow will also be planted and offer some lower level screening of views from Mount Drummond.
- Section AA reflects view form rear of Mount Drummond Square to the north of Block F. In year 1, the tops of the trees will have some effect of filtering views, by year 5, views will be filtered to the top storey and year 10 shows another level of growth where the density increases and offers further filtering of views.
- Stephen Behan and Paul Quinn for BKD Architects provide clarification to the Inspector regarding the variation of height and increase in floors to the east of Block F. Going from 3-4 storey in the northern end and 4-5 storey in the southern end. Colours in the sections provided did not reflect the same colours used in the 3D views.
- Nell Furber continues, presenting Section BB, noted to have incorrect colouring to highlight the additional storey. The assessment conclusion is that the top floor will be screened by the 4th floor and both floors will be screened by additional tree planting. Impact would be slight adverse as a result of the addition, and when taking into account what's already there, the impact is moderate.

- The addition of the proposed development will be mitigated by the architectural design and tree planting already permitted as part of the scheme under construction.

11.17. In response to questions raised by the Inspector:

- In response to the clarification sought by the Inspector on the cross section diagrams, these have been amended so that the proposed additional floors have colouring to correspond with the 3D drawing of the proposed development, to avoid any confusion. Wording also slightly updated to reflect the discussion.

11.18. Submission by Patrick Field, OCSC, providing daylight and sunlight analysis on behalf of the applicant.

- Providing a presentation in response to the Limited Agenda item on Daylight and Sunlight Analysis in relation to conditions both within the proposed development and for surrounding existing dwellings.
- Reference made to the BRE Guidelines for Planning Daylight and Sunlight and the BS codes. These documents are only a referral point and should not be used as an instrument of planning policy.
- Contact made with Paul Littlefair the author of the BRE Guidelines, in relation to the use of the 1.5% ADF factor, and they are in agreement that this factor should be used in apartment schemes, as these kitchens are not a habitable zone in the open plan living/dining space. It is an industry standard in Dublin. The other reason for its use include the necessary inclusion of balconies that remove sunlight and daylight. There would be need to increase floor to ceiling heights to meet a 2% factor and with increased glazing there would be additional solar gain and overheating.
- The rationale in relation to the units tested was to select the worse case units on the ground floor, and the assumption that conditions will always improve as you go up floors.
- For the purposes of the addendum report, every single unit on the ground floor have been tested, with selected units on upper floors as necessary.

- Compliance to the 1.5% target set and the 1% for bedrooms was achieved in all ground floor units in Block G. In Block E, again compliance demonstrated to these targets. In Block F, compliance was not hit in one of the worse case living/dining space originally selected and also found in some other units when the entire ground floor was tested. The compliance rate of 97.3% remains unchanged from that originally presented in the submission. Following the inclusion of all ground floor units for testing and upper floor units as necessary, 16 rooms fell below the target set. The compliance rate drops to approximately 91% when a 2% ADF target is set. By the 4th floor a target of 1.7% ADF is achieved. For each floor added, a change of approximately 0.1 of a percent occurs to the ADF value, as you go up each floor.
- Carlota S. Alvarez (OCSC) assists in explaining to the Inspector that where units do not meet the target value at ground floor, the units above have been tested and achieve compliance at the 4th floor level. A limited number of units at 1st, 2nd and 3rd floor do not pass. The overall compliance percentage takes into account these units at 1st, 2nd and 3rd floor.
- Patrick Field continues, the methodology in relation to sunlight analysis explained in accordance with BRE Guidelines. The overall quantification of area that receives 2 hours of sunlight in the proposed development is based upon a combination of all external communal areas and not expressed individually for each of those spaces. Explanation of the APSH received to the proposed development and how the orientation and inclusion of a balconies effects the level of sunlight received to windows. 52% of main windows in the proposed development achieve the BRE target value annually and this increases to 60% in winter.
- The original submission did not include all sunlight analysis because it was concluded that there was no significant effect, following the approach set out in the BRE Guidelines.
- In relation to the impact upon adjacent properties. Methodology explained in relation to daylight testing which is in accordance with the BRE Guidelines. Appendix F of the Guidelines states that the baseline can be the permitted development in certain circumstances, however it is stated that the 0.8

reduction would not be appropriate. As the permitted scheme for the site is substantially constructed, the 0.8 reduction has been used as the Guidelines do not provide an alternative value.

- Results of the analysis of daylight impact upon surrounding properties presented, with a comparison between the permitted scheme as the baseline and the proposed development. The ADF was also assessed for no.7 Leinster Park with plans of the property taken from the planning website for Dublin City Council. There is no change to the ADF level as a result of the proposed development.
- Explanation that the original submission tested ground floor windows as a worst case scenario because conditions improve as windows go up in a building. The addendum document has tested all windows to surrounding properties that could be impacted by the development in Leinster Park, Mount Drummond Square, Harold's Cross Road and to St Clare's National School.
- A good level of daylight is achieved to all surrounding windows. A minimal difference is experienced between the baseline and proposed conditions. The proposed VSC value is equivalent to between 80-99 percentage points of the baseline value in all cases, or a VSC value in excess of 27%.
- Overshadowing assessment updated. On the 21st March there is minimal change between the permitted and the proposed. Also tested the 21st June and 21st December and there is minimal difference.
- The sunlight has been tested to adjacent gardens in accordance with BRE Guidelines on the 21st March. The result is that there is minimal change between the baseline and proposed conditions. Properties own fences cast the shadow restricting sunlight on the 21st March.
- Inspector seeks clarification on the inclusion of a non-applicable value in the tables submitted. Confirmation is provided that 'N/A' is noted where the proposed value exceeds BRE target levels, however there may be a reduction from the baseline and therefore tables will be updated to include baseline values.

- Minimal change demonstrated between the proposed condition and the no development condition in relation to overshadowing.
- APSH analysis upon adjacent properties presented in accordance with methodology in the BRE Guidelines. Analysis has been carried out on the basis that if the reduction is less than 0.8 of the baseline value, the impact will not be perceptible. There is minimal difference between the baseline and proposed conditions. All results are within at least 80% of the baseline value.

11.19. In response to questions raised by observers:

- In relation to the windows for no.7 Leinster Park, confirm that the floorplans are as per the drawings submitted to Dublin City Council Planning Application website. All these windows have now been tested. Carlota Alvarez (OCSC) assists in presenting the results for these windows. All windows exceed the 27% VSC target. Paul Walsh (observer) asserts that the window at first floor serves a habitable room and not a bathroom as shown in the floor plans included by the applicant.
- In relation to the Paul Littlefair discussion, there is not a specific written statement in relation to this application, but general discussions were had in relation to the use of a 1.5% ADF target for kitchens. Paul Walsh (observer) asserts that this verbal comment should not be relied upon and is inappropriate without written evidence. John Spain (Planning Consultant) points to the full explanation of why a 1.5% ADF value has been used and not just the discussion with Paul Littlefair.
- In relation to trees, the planting is 10% evergreen and 90% deciduous and therefore, the trees are not included as part of the daylight impact assessment, which is in accordance with the BRE Guidelines. Paul Walsh (observer) asserts that the landscape architect for the development has advised residents that the trees will be evergreen.
- Carlota Alvarez (OCSC) describes the amendments to the addendum document to respond to points of clarification raised. Address points are now shown on the images of properties tested for the purposes of daylight analysis. Baseline values for sunlight to adjacent gardens are now shown for all properties analysed.

- Kieran Sweeney (Senior Executive Planner DCC) confirms that floorplans of no.7 Leinster Park are as per the plans granted planning consent by the Planning Authority. Confirms that the council has no questions in relation to addendum documents provided by the applicant.
- Cass Roche (PC Roche Associates Landscape Architect) provides clarification in relation to the proposed planting strategy to boundaries. The inclusion of a mix of evergreen and deciduous trees to provide screening to site boundaries, being predominantly deciduous. Confirms that planting will take place at the first planting season following completion of the development. Paul Quinn (Architect) confirms that the planting will take place once the site is no longer under construction, which is the appropriate time and in accordance with the planning conditions. Paul Walsh (observer) asserts that this confirms evergreen trees will be located on the boundary and therefore daylight and sunlight analysis should have included this; and the applicants own documentation is contradictory in relation to the inclusion of evergreen trees on the boundary. Carlota Alvarez (OCSC) confirms that because there are only a few evergreen trees, they have not been included as part of the daylight analysis. Patrick Field (OCSC) continues, explaining that the benchmark for including trees in the BRE Guidelines is a strong evergreen belt, and that is not the case for the proposed development. There are not enough evergreen trees to have an impact on daylight and sunlight and so they are not included.
- Sean O'Brien (observer) queries why evergreen trees are not located on the boundary closest to no.28 Leinster Park. Cass Roche (PC Roche Associates Landscape Architect) confirms that it would not be appropriate to locate evergreen trees close to no.28 Leinster Park because of the root spread and potential for structural damage at that point.

11.20. Submission by Paul Walsh, observer and resident of Leinster Park.

- Submission deals with the presentations given on behalf of the applicant.
- Presentation by Patrick Field, states that permitted becomes the baseline and proposed versus permitted, is the justification for using the 0.8 factor in the assessment. If this development is for 248 apartments, that factor cannot

apply, if the application is only for 28 apartments then the development does not qualify as an SHD application.

- Presentation by Neil Furber, places an emphasis on the additional effect of the additional buildings, the effect is slight or moderate. If it's only the additional 28 apartments it does not qualify as an SHD application.
- An incorrect image is being used to the rear of 7 Leinster Park, resulting in the omission of 2 windows. These windows face directly onto Block G in the development site. Following a query from ABP Inspector regarding the location and form of the windows, Mr Walsh confirmed the window is to a dressing room that forms part of the bedroom and not to the bathroom as shown in the applicant's submission.
- Patrick Field refers to a conversation with Paul Littlefair, which is not policy and was a referral point only. There is no documentation to back up the conversation or the assertion that kitchens are non-habitable spaces. The applicant is admitting that the kitchens are non-habitable.
- The use of a 1.5% ADF value is incorrect and even using this value, it is not until the fourth floor that units pass.
- There is a planning condition from the previous planning permission that trees were to be retained, and query whether these trees have been allowed for in the analysis.
- Some gardens didn't meet the criteria for sunlight, but they are not included in the report.
- Rooflights on the ground floor at no.7 Leinster Park have not been included in the daylight and sunlight analysis.
- Evergreen trees were included in the details submitted for boundary planting, why are these being replaced with deciduous trees.

11.21. Submission by Norah Campbell, observer and resident of Mount Drummond Square.

- Submission deals with the presentations given on behalf of the applicant.

- The applicant has not asked residents for access to the rear of properties to assess views, and instead they are relying on proxies that don't actually show the visual impact from the rear of properties.
- The analysis is based upon the additional floor and not upon the development as a whole. The impact should be assessed of all six floors.
- Queries raised regarding the number of landscaping plan versions that have been created and why planting hasn't yet taken place after 3 years of development works.
- Reference to images provided by the architects to residents in Mount Drummond Square and the inaccuracy of these compared to the development under construction on the site. Query why these were given to residents, and question the accuracy of the submission documents in general as a result.
[Enclosures: Images provided by the architects to residents in Mount Drummond Square and corresponding photos of views from the rear of properties.]

11.22. Submission by Sean O'Brien, observer and resident of Leinster Park.

- Resident of 28 Leinster Park, reference to photos provided in Paul Walsh's written submission of the visual impact of the development from this address. *(Note: photos were received at An Bord Pleanála offices and have been considered).*
- Query the tree planting on the boundary closest to his property. Trees have been taken out from this boundary and these trees have not been replaced. Query what screening measures will take place as when the developer leaves the site, tree maintenance will be a matter for a management company. Query when the temporary boundary treatment formed of a wooden screen will be removed.
- Query the use of the photomontages.

11.23. Written submission by Paul Walsh received 22nd January 2021, observer and resident of Leinster Park.

- Prejudicial timeframe: A significant volume of data and reports were provided by the Applicant (at the Board's direction) only 24 hours before the Oral Hearing and it was not possible for observers to review all these documents and make cogent observations in this timeframe. Therefore observers have been prejudiced by not having been granted a reasonable timeframe to prepare observations, while the applicant has been provided a significant length of time. Request an adjournment to be allowed to consider these matters properly and prepared a response.
- If the adjournment is refused, intention to reserve the right to seek leave to apply for judicial review of that decision, and any overall decision on which observers have not been afforded the ordinary consultation period to consider new materials. Intention to seek leave on all matters considered by the Inspector and/or decided by the Board after the oral hearing and intention to seek costs on the basis of this submission.
- Reference to all submissions made previously in respect of this matter, in particular the submissions by Alan Whelan, Rory Walsh, Gary Rowan and all the documents outlining the grounds for the judicial review.
- Eligibility / Jurisdiction: This is an application for 28 apartments only, not 248 apartments, and therefore doesn't come within the remit of SHD / ABP in the first instance.
- In discussing the CCSC report during the Oral Hearing, it was specifically stated that the 'permitted becomes the baseline' and 'proposed versus permitted' as the justification for using the factor of 0.8 in calculations. If this application is of 248 apartments and not just 28 apartments, the 0.8 factor cannot be used.
- Similarly in relation to landscape and visual assessment, the submission emphasises the additional effect on the already built buildings of just the additional 28 apartments as justification for his conclusions, proving the application is only for 28 apartments.

- The 220 apartments are nearly completed on the site now (photos attached), so this current application can't double-count buildings which already received their own separate planning permission and which have already been built.
- Lack of Statutory notice: The Board is obliged to give the required statutory notice (5 days in advance of the oral hearing) on its website but didn't do so, prejudicing both actual and potential observers. (Screen grabs taken).
- Use of the 2% ADF factor: Reference to expert opinion by Rory Walsh of BPG3 dated 20th April 2020 opined that 2% was the appropriate factor and repeat that the applicant arbitrarily reduced the criterion down from 2% to 1.5% in order to try to demonstrate compliance.
- In relation to references to conversations with Paul Littlefair, no documents have been included in the submission supporting this assertion, and no context/basis for the comment, whether it referred to this application specifically and a comprehensive context to understand the comments. As a result, all the relevant conclusions are fatally undermined.
- The applicant refers to non-habitable kitchens which does not meet the development standard.
- In relation to the use of the 0.8 times factor, in the lack of any alternative benchmark, the obvious conclusion is to not use any factor to reduce the criterion.
- The ground floor doesn't meet their suggested 1.5% minimum requirement, nor do certain rooms on the 1st, 2nd and 3rd floors. It's only by the 4th floor that highlighted rooms meet their own reduced compliance target of 1.5%.
- The ADF values for certain rooms on the 1st to 3rd floors were calculated by the Applicant to not meet the 1.5% ADF, but not included in the submission, and subsequently added at the prompting of the Inspector. The developer presents 28 apartments that it says fall under the BRE Guidance, and says the pre-2018 apartments do not require to adhere. It is nonsensical to apply different development standard to identical apartments within the same buildings sharing the same services and all other amenities. Also question to the compliance percentage as in the 90s as being accurate as a result. What

is the compliance percentage if the target is 2% and will future residents be informed their property is not compliant?

- Note that figures were calculated by the Applicant showing them not meeting the minimum level of compliance for sunlight in certain gardens, but these were not included in the submission, and subsequently added at prompting of the Inspector.
- Tree coverage on boundary: In their original report last year the effect of the replacement trees along the boundary with no.7 Leinster Park were not allowed for in the daylight and sunlight report – as they should have been as per the relevant guidelines. It was requested that this be done, note that they still have not been allowed for in the updated calculations and report. They claim the type of tree proposed gave little screening coverage, as well as being deciduous, and therefore didn't need to be allowed for in the calculations, this is contrary to the specification for tree and hedgerow planting described in the Addendum LVIA Presentation. Assert that these calculations to include the trees are not provided, because they would not meet minimum compliance levels if they take them into account.
- Daylight Report Generally: Omission of VSC analysis of ground floor vertical rooflight windows. These were subsequently added, with no validation of the figures. Assert that these were deliberately excluded.
- On page 28 of the presentation, the image shown of no.7 Leinster Park was incomplete, missing a first floor window facing the development and a rooflight at 2nd floor. The subsequent updated results show a VSC reduction of 10% but they claim this is OK as it's a non-habitable room. This window forms part of a bedroom (walk-in wardrobe) and is not a bathroom. Therefore the conclusion is incorrect.
- Windows 2 and 3 are not in the same room so an average VSC cannot be taken and the conclusions are invalid.
- There is no analysis of the effect of daylight, sunlight etc. on the houses in the cul-de-sacs near houses 10-12 Leinster Park and near houses 28 & 29 Leinster Park, all of which are along the boundary of the development.

- Note that they incorrectly label houses in Leinster Park as 10 and 11, these are actually houses 9 and 10.
- Note significant reductions to VSC levels at the bottom of pages 32, 35 and 37 (up to 18%), which are significantly detrimental to the daylight quality available.
- Other tables within this report show significant reductions from Baseline values and/or BRE guidance. Submit these reductions should not be allowed, any decision for allowing such reductions should be adequately explained and justified. In the absence of same, it is impossible to understand any reasoning that might permit an interested party to understand any decision made without that.
- Levels of sunlight were to be measured by reference to internal habitable spaces only and not to external non-private balconies. Therefore the conclusions are invalid.
- NA is given as the Baseline value and yet 60% is given for the proposed value. If they can calculate a proposed value, they can calculate a Baseline value and therefore their conclusion (NA) is incorrect. In order to arrive at conclusions on values, it is necessary to have fixed data to begin with. In the absence of same, no valid, rational conclusion can be reached and no departure from the development standard justified.
- Why are the proposed trees not evergreen trees of similar variety to the trees which were unlawfully removed - specifically to replace those under a previous ABP planning condition (condition no. 9 of ABP Reference PL 29S.245164 plus subsequent Dublin City Council Enforcement References E08/17 and E1166/19)? The Board should be aware that the trees as per the condition haven't been replanted yet, nearly 4 years later.
- Bias and / or predetermination: 1 month was given to the applicant to prepare submissions compared to 24 hours given to observers. The restricted agenda for the Oral Hearing, the specific choice of agenda items to benefit the applicant, the previous lack of validation and / or challenge by the Board of the Applicant's inaccurate and misleading submissions on daylight and sunlight analysis last year, plus the points raised above in relation to

jurisdiction and lack of statutory notice – give rise to a legitimate perception of bias on behalf of the Board.

- Only had opportunity to cursorily review 3 of the 11 documents submitted by the applicant due to the short timeframe. Haven't been granted reasonable time to prepare observations and fundamentally prejudiced in this regard.
- Reference to comment made by the Dublin City Council representation during the Oral Hearing that he had read all of the Applicant's submissions and accepted them. It is clear that this is highly unlikely, or unlikely he did so in a manner with sufficient diligence and challenge. Either that, or he had the documents far ahead of the hearing. Therefore formally record disagreement with his comment and therefore any reliance to be made by the Board on his comment.

[Enclosures: O'Connor Whelan letter dated January 2020 relating to SHD ref.305728-19; Affidavit of Gary Rowan relating to The High Court Judicial Review 2020 No 266 JR; BPG3 letter dated 20th April 2020 relating to ABP-305728; Appendix to Paul Walsh Submission PC Roche site section drawing.]

11.24. **Written submission by Paula Russell, representing Harold's Cross Village Community Council.**

- The assessment of the impact on views contains an element of subjective professional judgement as recognized by Pleydell Smithyman Ltd. Therefore argue that the interpretation of the impact can be different depending on the judgements of the residents and others. Impacts are not perceived as moderate or slight by residents in Leinster Park or Mount Drummond Square.
- The visibility sections aa included at Appendix A of the LVA addendum prepared by PC Roche and presented at the oral hearing, illustrate the potential impact on private visual amenity and that landscaping has to be used extensively as mitigation. Notwithstanding landscaping, the illustrations show that at 48 Mount Drummond Square there will still be unrestricted views of the upper part of the proposed 6th storey set back after 5 years of growth, and views remain after 10 years of growth, albeit restricted. Section bb also illustrates impact on visual amenity.

- The LVA illustrates that there is a moderate impact on the wider area of Harold's Cross including on the views from St. Clare's Avenue, these are representative of views from the lower part of Harold's Cross Park, which is the major amenity open space in Harold's Cross.
- The analysis presented illustrates increased impacts in terms of visual impact on the surrounding built environment and we would argue that the scale of the proposed development will not integrate cohesively with its neighbourhood, as required by the Urban Development and Building Height Guidelines 2018. The impacts on neighbouring properties, which are judged in the technical documents as moderate, but which are perceived by neighbouring residents as significant.

12.0 Assessment

12.1. The planning issues arising from the proposed development can be addressed under the following headings-

- Principle of Development
- Height, Design and Density
- Neighbouring Residential Amenity
- Proposed Residential Standards
- Traffic and Transport
- Material Contravention
- Screening for Environmental Impact and Appropriate Assessment
- Other Issues

12.2. Principle of Development

12.2.1. I note third party submissions relating to the need to assess the development as a whole on the site and not just the additional units proposed. In relation to the appraisal of the development, I confirm that my assessment focuses on the 197 units proposed in Blocks E, F and G under this application, combined with remaining Blocks A, B, C, D, J1 and J2 permitted and unchanged by this application, total 248

units on the site. My assessment will focus particularly upon any changes to the built form under this current application when compared to that previously permitted on the site. However, my assessment will still consider any cumulative development impacts for the overall site area, being the total 248 units that would result from a grant of planning consent.

12.2.2. Therefore, while I will draw an emphasis on differential impacts between the permitted development on the site and the proposed development, this is in recognition of the status quo on the site and does not override my *de novo* assessment of the development.

12.2.3. Land Use Zoning

12.2.4. The northern half of the subject site is zoned Z12 and the southern portion is zoned Z1 under the Dublin City Development Plan 2016-2022. Residential is a permissible use in both of these land use zonings. The site also overlaps a designated Zone of Archaeological Interest and archaeological considerations are set out in detail below. I note that the Planning Authority has raised no objection to the principle of residential development on this site and that previous planning approvals from both Dublin City Council and An Bord Pleanála have established the principle of development of the site for the same.

12.2.5. I have given consideration to third party concerns regarding the transitional zoning of the site, with particular regard to the proposed height of the development. Section 14.7 of the Dublin City Development Plan 2016-2022 describes 'Transitional Zone Areas' being relevant to the boundaries between zones. The Plan states that it is important to avoid abrupt transitions in scale and use between zones, avoiding developments that would be detrimental to the amenities of the more environmentally sensitive zone they abut. Determining such an impact first requires consideration of the compatibility of a site zoning to an adjacent zoning, and whether adjacent zonings are more environmentally sensitive.

12.2.6. To the south, the subject site reflects the same Z1 zoning as its surroundings. While to the north, the site has a Z12 residential zoning that is in keeping with residential boundaries it abuts. The site also abuts a boundary with the school, and the locating of a residential development adjacent to a school on land zoned Z15 (to protect and provide for institutional and community uses) is an appropriate juxtaposition. As a

result, I do not consider there to be any transitional zoning of particular sensitivity relating the proposed use of the site. I consider the form of the development and transitions in scale in more detail below.

12.2.7. Overall, I consider the principle of the proposed development of this site to be acceptable.

12.3. Density, Height, Scale and Design

12.3.1. Density

12.3.2. A number of representations have been received regarding the proposed density of the development. Concerns centralise around the appropriateness of the density level for the location. Submissions state that the density is excessive and represents overdevelopment of the site, without supporting public transport infrastructure to support the density proposed.

12.3.3. The proposed density is 146 units per hectare. This is increased from the approved development on the site which has a density of 129 units per hectare. Policy at national, regional and local level encourages higher densities in appropriate locations. Project Ireland 2040: National Planning Framework (NPF) promotes the principle of 'compact growth'. Of relevance, are objectives 27, 33 and 35 of the NPF which prioritise the provision of new homes at locations that can support sustainable development, encouraging increased densities in settlements where appropriate. Section 28 guidance, including the Building Heights Guidelines, the Sustainable Residential Development Guidelines and the Apartment Guidelines, assist in determining those locations most appropriate for increased densities. The Apartment Guidelines define the types of location in cities and towns that may be suitable for increased densities, with a focus of the accessibility of the site by public transport and proximity to city/town/local centres or employment locations.

12.3.4. The site is located less than a 2 minute walk to a bus stop serving high frequency inner city bus services. The site is also a short walk to the inner city area. The surrounding local centres and employment opportunities that characterise the city are easily accessed on foot, by cycle or by bus from the site location. The site is also approximately a 20 minutes walk to Charlemont Luas stop. As such, I consider that the site can be described as a central / accessible location as defined under the Apartment Guidelines and sustainably support the increased density level proposed.

However, the overall acceptability of this density is subject to appropriate design and amenity standards, which are considered in the relevant sections below.

12.3.5. I note third party responses referring to a previous scheme for the site that exhibited a lower density than that currently proposed, where the Inspector assessed that previous scheme to be overly dense for the site. This relates to ABP Ref.PL29S.245164 which the Board granted planning permission for in November 2015. It is clear therefore, that the Board determined that the scheme, and associated density was acceptable. In addition, I note that the planning policy basis for encouraging increased densities in appropriate locations that I have outlined above, is a more recent context for the assessment of density that post-dates this previous decision referred to by third parties.

12.3.6. Height, Scale and Design

12.3.7. Concerns have been raised in a number of third party responses to the application regarding the proposed scale of the development and associated amenity impacts. Particularly the 6 storey height proposed in the context of the established lower rise surroundings. Concerns are also expressed at the planning approval process for development on the site which is suggested to have been piecemeal and lacking consideration of the cumulative impact of the overall development on the site.

12.3.8. My assessment of the impact upon surrounding residential amenity is undertaken in section 12.4 and 12.5 below. This section of my report appraises the acceptability of the proposed height and design in relation to relevant planning policy and in light of concerns raised. My appraisal of the development considers the impact of the proposed maximum 6 storey blocks on the site on the surrounding visual amenity, and in light of any particular sensitivities in the receiving environment, including potential impact upon any conservation areas or Protected Structures. My assessment is informed by the established planning approvals on the site; however my appraisal is of the development as a whole, and not purely for the additional storeys proposed.

12.3.9. The policy basis for my assessment of the height of the development is informed by both national and local planning policy. The 'Urban Development and Building Heights Guidelines for Planning Authorities' (the Building Height Guidelines) provides a detailed national planning policy approach to the assessment of building

height in urban areas. It provides clear criteria to be applied when assessing applications for increased height. The guidelines describe the need to move away from blanket height restrictions and that within appropriate locations, increased height will be acceptable even where established heights in the area are lower in comparison. In this regard, SPPRs and the Development Management Criteria under section 3.2 of these section 28 guidelines have informed my assessment of the application. This is alongside consideration of other relevant national and local planning policy standards. Including national policy in Project Ireland 2040 National Planning Framework, and particularly objective 13 concerning performance criteria for building height, and objective 35 concerning increased residential density in settlements.

12.3.10. SPPR 3 in the Building Height Guidelines states that where a planning authority is satisfied that a development complies with the criteria under section 3.2 then a development may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise. In this case, the development plan indicates a maximum height of 16m, while the proposed development has a height of approximately 19.615m (6 storeys with lift overrun above). Development of the site was previously approved on appeal up to 16m (5 storeys). I have addressed the material contravention of the development plan in section 12.7 below and I will provide further assessment against the Building Heights Guidelines criteria in section 3.2 here.

12.3.11. The first criterion relates to the accessibility of the site by public transport. The site fronts directly onto Harold's Cross Road, a major road into the city centre and a bus corridor with high frequency services. A bus stop serving inner city bus routes is located less than a 2 minute walk from the site with high frequency bus services, including route no.'s 16 and 9. The site is also approximately a 20 minute walk to Charlemont Luas stop and around a 6 minute walk to the canal, which demarks the inner city centre ring for Dublin City. I note that the future BusConnects corridor runs alongside the site and will further increase connectivity across the bus network. Notwithstanding future transport proposals, it is clear to me that the site has good existing public transport accessibility to high frequency bus services, as well as access to the wider network including to the Luas.

12.3.12. The second criterion relates to the character of the area in which the development is located. The site is not located in a conservation area itself, however I note that residential conservation areas are located further to the south of the site around Grosvenor Square and Leinster Road, and the Grand Canal Conservation Area is located further to the north of the site. The site itself is separated from these surrounding conservation areas by the residential streets on, and around Leinster Park to the south, and Harold's Cross Road to the north. There is a Protected Structure located on the site, RPS no.3583 covering Mortuary chapel, the main convent building and chapels of St. Clare's; works applied for under this application do not include alterations to these structures, with alterations approved under previous planning consents for the site. A Conservation Compliance Report has been submitted with the application and provides an assessment of potential impacts of the proposed development upon the Protected Structure; this concludes that the design of the proposed development adequately mitigates against any adverse impact. I have also assessed potential impacts upon the Protected Structure and concur with the findings of the report. Alterations are proposed to Blocks E, F and G under this application only. Blocks F and G are located a sufficient distance from the Protected Structure and the proposed maximum 6 storey height will not in my view, adversely impact the setting of the Protected Structure.

12.3.13. Block E is located closest to the Protected Structure. Block E has a maximum 6 storey height, with set backs at 4th and 5th storey level where it is located closest to the Protected Structure (Block D) and a further 10m set back for the maximum 6th storey height. At the 4th storey height, Block E has a proposed height just below the parapet height to the Protected Structure (Block D). The transition 4th storey height and set backs at 5th and 6th storey mitigate the increased height of Block E, with the 6th storey inset approximately 10m from the west where the Protected Structure (Block D) is situated on the site.

12.3.14. The wider environs of the site are generally characterised by residential dwellings of a variety of styles and ages, generally 2 to 3 storey in height; albeit I note some single storey dwellings facing Harold's Cross Park to the west of the site. Buildings onto Harold's Cross Road are generally more historical, and of an early 20th century, late 19th century appearance. Leinster Park is a gated residential estate to the south of the site and is a more modern housing development. Mount Drummond Square is

an early mid-twentieth century two storey residential housing estate. Harold's Cross Park is an enclosed tree lined green space bounded by Harold's Cross Road on both sides and located directly opposite the site.

12.3.15. Blocks E, F and G are located to the rear of buildings fronting Harold's Cross Road and therefore will only be visible in views over the top, and between, these frontage buildings when viewed from Harold's Cross Road. The eastern and southern boundaries for the site that Blocks E, F and G are closest to, bound the rear and side boundaries for properties in Leinster Park and Mount Drummond Square. The proposed development is therefore most visible from surrounding public realm areas and streets in views at the end of cul-de-sacs, as well as between, and over the top of, dwellings in these adjacent streets.

12.3.16. The first item under the Limited Agenda for the Oral Hearing related to the Landscape and Visual Assessment of the proposal, with associated viewpoints and photomontages from surrounding residential streets, specifically Leinster Park, and I consider this matter further here. I also note a number of third party objections received to the application from residents in these streets and I have closely examined the potential visual impact of the proposed development upon these areas under the remaining criteria under section 3.2 of the guidelines. My assessment has also been informed by my site visit where I viewed the development from these surrounding streets.

12.3.17. The remaining pertinent criteria under section 3.2 of the Building Height Guidelines relate to the following: contribution of the proposal to the place-making; its contribution to the urban neighbourhood and streetscape; the avoidance of uninterrupted walls; contribution to public spaces (including inland waterway/ marine frontage) and compliance with flood risk management guidelines; improvement of legibility; contribution to mix / typologies in the area; and daylight performance against BRE criteria as well consideration of overshadowing / ventilation / views. Specific assessments are also required depending on the scale of the building proposed. I note the submission of CGI visualisations and photomontages of views, a Conservation Compliance Report, Landscape and Visual Appraisal, and Daylight and Sunlight Report have been submitted, all of which have informed my assessment of the proposed development.

12.3.18. I note Ms Russell's submission in relation to the visibility of the proposed development on Harold's Cross Road. As indicated above, I consider that the proposed alterations described under this application to Blocks E, F and G will have limited visual impact from Harold's Cross Road, due to the situation of blocks to the rear of buildings fronting that road. Photomontages of the proposed development have also been provided to demonstrate the visual impact of the development from surrounding public areas. Some visibility is shown over the top of buildings in Mount Drummond Square in Views 6 and 7. The applicant provided further photomontages of viewpoints in response to the Limited Agenda Oral Hearing from Leinster Park (Views 8, 9 and 10), Grosvenor Lane (Views 11 and 12) and St Clare's Avenue (View 13). Informed by these additional viewpoints, the amended Landscape and Visual Appraisal (LVA) with the application, concludes that the overall effect of the proposed development upon surrounding residential streets is slight or moderate which is consistent with conclusions of the original LVA submitted with the application.

12.3.19. View 6 and 7 assist in determining how an increase in height to Block F particularly, will be perceived from Mount Drummond Square. I also note Ms Campbell's submission in relation to visibility of the proposed development from the rear of properties in Mount Drummond Square. Block F is permitted at 5 storeys in height along its front western elevation and this is proposed to increase to 6 storeys. The height of Block F decreases to 4 storeys to the east elevation as permitted, and this is proposed to increase to 5 storeys to the south east end of the block, remaining 4 storeys for the centre of the east end of the block. Block F is also permitted with a further reduction in height to 3 storeys at the north east end of the block and it is proposed to increase the height of Block F to 4 storeys in height at this north east end.

12.3.20. From my visit to the site, it was clear that in addition to the visibility demonstrated in Views 6 and 7, the development will also be clearly apparent where the terrace in the Square breaks, such as between numbers 48 and 49 Mount Drummond Square. This also gives an idea of the visibility of the development from the rear gardens of these properties. I also note the submission made by Norah Campbell and the photos presented by her in relation to the visibility of the development from rear gardens in Mount Drummond Square. The development is proposed to be between 4 and 5

storeys in height to the rear of these properties, with the 6 storey height set back as viewed from Mount Drummond Square.

- 12.3.21. The development is no doubt readily visible, however a sufficient distance is maintained in my view, to ensure that this visual impact is in line with what might be expected in an urban area such as this, and therefore not overbearing given this context. I note the LVA conclusion that the impact of the proposed development is generally moderate on surrounding residential streets. The LVA also considers the increased height in isolation, concluding this impact to be negligible or slight. I have also considered the submissions made in relation to the visibility of the proposed development from Mount Drummond Square and associated impact upon amenity.
- 12.3.22. I am considering the overall impact of Blocks E, F and G at heights between 4 and 6 storeys, and as part of an overall development on the site. My assessment is not limited to consideration of the additional storey in isolation. In my view there is a prominent change to the rear backdrop from properties in Mount Drummond Square as a result of Block F, which will not be entirely obscured by boundary planting. However, I consider this to be expected to result from any redevelopment of the subject site at a scale appropriate for an urban area, and therefore this impact is not significantly harmful in my view. Therefore, while the character to the rear of these properties changes as a result of the development of the subject site, this is in keeping with its urban location, being an area located in Dublin City and appropriate for the density of development proposed.
- 12.3.23. The development is most visible from the street as it appears from Leinster Park and Views 8, 9 and 10 were provided to the Oral Hearing to illustrate this visibility. I also visited Leinster Park myself to assess the impact. Again, the LVA concludes that the overall effect of the proposed development would be moderate from Leinster Park. I also note the submissions in relation to the visibility of Blocks G and F from Leinster Park and associated visual amenity impacts perceived by residents. Blocks G and F are particularly visible at the end of cul-de-sacs for the street. Blocks J1 and J2 are also prominent at the entrance to Leinster Park, however there are no alterations to these blocks proposed in this current application. Overall, it is clear that the development as a whole, is very visible from Leinster Park and will alter the character of the backdrop from this residential estate. While this change to character is apparent, the appearance of the development adjacent to, and over the top of

dwellings in the surrounding residential streets is not harmful in my view and is appropriate for the urban location of the site, where a varied skyline should be expected. The appearance of increased scale will also assist place-making and legibility through the creation of markers in the skyline. However, while I am generally satisfied that the proposed maximum height to Blocks E, F and G is acceptable under this application, there is one part in Block F where the proposed 5 storey height is more problematic in my view, and I address this further below.

12.3.24. In assessing the contribution of the proposed development to the urban neighbourhood, I am cognisant of its relationship to neighbouring buildings. At its closest point, Block F is situated 4.5m away from the cul-de-sac and the side boundaries for properties in Leinster Park, where it is proposed at 5 storeys in height. This separation distance increases to over 11m where the block increases to 6 storeys in height. The previous planning approval on the site permitted Block F at 4 storeys in height closest to the boundary with Leinster Park (4.5m), increasing to 5 storeys as the separation increased (to over 11m). In my opinion, the locating of a 5 storey block approximately 5m from the boundary with the cul-de-sac and 8m from the dwelling at no.28 Leinster Park would not be a positive contribution to the urban neighbourhood and would have an overbearing impact upon residents there. This is evident in View 10 provided in the photomontages of the proposed development. View 10 demonstrates that while the proposed 6 storey element in Block F would be set back into the site, reducing its visual prominence, the development at 5 storeys would appear visually dominant at the confluence of the site with the cul-de-sac here. In my opinion, the existing view at 4 storeys at this point represents a more appropriate transition element to the adjacent residential estate at Leinster Park and this is illustrated in View 10. In my view, the current structure in this particular location at 4 storeys in height, is the maximum that can be accommodated without harmful impact upon the visual amenity of residents in Leinster Park and an overbearing effect. This is particularly in consideration of the character of this part of the Leinster Park estate, located away from Harold's Road, which as a major inner-city road has greater potential to accommodate extreme transitions in scale.

12.3.25. I consider that the proposed 6 storeys in Block F (which is set back from the east) is acceptable, as the separation distance to the boundary with Leinster Park increases (to over 11m). Therefore, my concern relates solely to the block labelled no.4 on the

drawings in Block F at its 5 storey height. In my view, this element should be reduced to 4 storeys, and I have included a condition regarding the same. While my concern is focused on the relationship at the southern end of the site closest to the end of the cul-de-sac for Leinster Park, I consider that the most appropriate way to achieve this alteration is to revert to the fourth floor plan (5th storey) as previously approved, reducing the number of units at this level from 8 (proposed) to 5 (as previously approved). This then creates a consistent 4 storey level to the rear of Block F, increasing to 6 storey at the front of the block where separation to the Leinster Park properties increases. The proposed fifth floor plan (6 storey) should not be altered in my view.

12.3.26. In relation to the design of the development (including avoidance of uninterrupted walls and contribution to space), I consider this to be appropriate. With variety and interest created in elevational treatment that includes balconies and varied fenestration sizes. Materials are appropriate for the area, with a largely brick finish alongside cement cladding used vertically to break down the blocks into defined bays, as well as to the upper storeys to distinguish the top of the blocks. The proposed development also increases the amount of fenestration in the upper storeys of Block F on the east elevation, removing an area of uninterrupted wall in the proposed development, when compared to the permitted development (I address potential for overlooking and separation distances in detail in section 12.4 below). I note that the western elevation of Block G incorporates only limited opaque glazing and is largely an uninterrupted brick elevation, however this is in response to the adjacency to the Parkview apartment block to the west of the site. This treatment ensures that there is no overlooking of that building and any associated adverse impact on residential amenity, or indeed any overlooking of the site itself, in the event of redevelopment of that neighbouring area. As a result, I consider this to be an appropriate treatment of the development at this end of Block G.

12.3.27. The proposed development will provide increased diversification of housing typology in the area which is currently dominated by self-contained dwellinghouses. The incorporation of apartments of the site will therefore be a positive contribution to the mix of typologies in the area. In relation to Building Research Establishments (BRE) criteria for daylight and sunlight, I discuss this in detail below in sections 12.4 and 12.5 of this report.

12.3.28. Overall I consider that, with the reduction in height of Block F from 5 storeys to 4 storeys, and the remainder of Block F at 6 storeys, and Blocks E and G at a maximum of 6 storeys; the proposed development satisfies the criteria described under section 3.2 and therefore SPPR3 of the Building Height Guidelines. This follows the complete assessment set out in my report and particularly sections 12.3, 12.4, 12.5 and 12.9.

12.4. Neighbouring Residential Amenity

12.4.1. Third party responses to the application have raised a number of concerns regarding impacts upon residential amenity, these include overshadowing from the proposed blocks upon existing dwellings, loss of daylight to existing dwellings, overlooking and loss of privacy to existing dwellings, loss of trees and inadequate boundary planting to counteract overlooking, and reference to the approach taken to residential amenity in precedent schemes in the area. The Limited Agenda Oral Hearing included a second item relating to Sunlight and Daylight Analysis and the applicant provided a Daylight Sunlight Addendum Report in response to this alongside a presentation of results, that was updated during the course of the Oral Hearing in response to clarifications sought. Submissions from observers were also made with respect to daylight and sunlight.

12.4.2. Daylight and Sunlight

12.4.3. I note that the criteria under section 3.2 of the Building Height Guidelines include the performance of the development in relation to minimising overshadowing and loss of light.

12.4.4. A Daylight and Sunlight Report was submitted with the application dated October 2019. An Oral Hearing was held on the 20th January 2021 and daylight and sunlight was a key element of the limited agenda. I also refer to the additional material submitted relating to daylight and sunlight, ref. OCSC St. Clare's Oral Hearing Presentation 20th January 2021 Rev.2 and OCSC Daylight Sunlight Addendum.

12.4.5. I note that loss of daylight and overshadowing forms a key objection from residents and was highlighted in observer submissions to the Oral Hearing. A number of criticisms are also raised with respect to the data presented by the applicant and I address these points as part of my assessment below.

12.4.6. The original Daylight Sunlight Report for the application, analysed a sample of 'worst case scenario' windows in surrounding properties, and concluded that there was no significant impact as a result of the proposed development. The Daylight Sunlight Addendum Report expands the analysis to include all windows in surrounding properties that could potentially be impacted by the proposed development, as well as consider impact upon private garden areas as a result of overshadowing.

12.4.7. The report describes the performance of the development against BRE criteria (The Building Research Establishment guidelines on Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice). The analysis provided describes the results of testing for the proposed development compared to the consented situation (planning permission ABP ref.301835-18, PA ref.4040/17). This approach is accepted under the BRE Guidelines which describes in Appendix F that a permitted scheme can be used as a benchmark if there is an extant planning permission and daylight impact is being analysed due to changes in the design.

12.4.8. Appendix F of the BRE Guidelines states:

"Sometimes there may be an extant planning permission for a site but the developer wants to change the design. In assessing the loss of light to existing windows nearby, a local authority may allow the vertical sky component (VSC) and annual probable sunlight hours (APSH) for the permitted scheme to be used as alternative benchmarks. However, since the permitted scheme only exists on paper, it would be inappropriate for it to be treated in the same way as an existing building, and for the developer to set 0.8 times the values for the permitted scheme as benchmarks".

12.4.9. The applicant asserts in their submission, that as construction works on the site are advanced for the permitted scheme, and no alternative to the 0.8 times value is provided in the guidelines, they have included the 0.8 times benchmark in their assessment. I note that Mr Walsh raises concerns in his submission to the Oral Hearing, that the use of the 0.8 factor is inappropriate.

12.4.10. It should be noted that the standards described in the BRE guidelines are discretionary, not mandatory policy/criteria. While the criteria under 3.2 of the Building Height Guidelines refer to these standards, it is that 'appropriate and reasonable regard' is had to the BRE guidelines, rather than a requirement that proposed developments adhere to the standards described. The BRE guidelines

itself states that: *'The advice given here is not mandatory and the guide should not be seen as an instrument of planning policy'*. The standards described in the guidelines are intended only to assist my assessment of the proposed development and its potential impacts. Therefore, while demonstration of compliance, or not, of a proposed development with the recommended BRE standards can assist my conclusion as to its appropriateness or quality, this does not dictate an assumption of acceptability or unacceptability.

12.4.11. In relation to daylight, the BRE Guidelines recommend that neighbouring properties should retain a VSC (this assesses the level of skylight received) of at least 27%, or where it is less, to not be reduced by more than 0.8 times the former value (i.e. 20% of the baseline figure). This is to ensure that there is no perceptible reduction in daylight levels and that electric lighting will be needed more of the time. However, Appendix F of the Guidance, clearly stipulates that while it is appropriate to use a permitted scheme to set the baseline value, the use of the 0.8 times value to demonstrate appropriate reduction, would not then be appropriate. This is because the 0.8 times benchmark would have already been relied upon during the assessment of that permitted scheme. Therefore, I do not accept the applicant's reliance upon demonstrating reductions within 0.8 times of the baseline value (being the permitted scheme) to demonstrate compliance with BRE recommended target values. As a result, my assessment focuses on the proposed VSC value compared to the baseline (the permitted scheme), and where there is a reduction, I consider the significance of this.

12.4.12. The report identifies the properties analysed on Leinster Park, Mount Drummond Square and Harold's Cross Road as well as St. Clare's National School adjacent to the site.

12.4.13. The applicant presents the results for 7 windows at no.7 Leinster Park, a number of these were added during the course of the Oral Hearing. The rooflights and dormer window all retain a proposed VSC of over 27% in the proposed condition. The ground floor window facing west does not experience any reduction as a result of the proposed development. Two first floor windows are also tested, one to the bedroom and the other to what the applicant understood to be a bathroom, following a review of plans of the property on DCC's website. However, the resident of no.7 Leinster Park, Mr Walsh, confirmed in his submission that both windows serve the bedroom,

albeit one is to a walk-in wardrobe area. Both windows retain a VSC value that is within 90(+)% points of the baseline condition. It is my opinion that this corresponds to a subtle reduction between the baseline and proposed conditions. The applicant also presents the ADF values for this adjacent property. An assessment of ADF is usually used to determine whether the daylight levels in a proposed development will be acceptable. The BRE guidelines state that use of the ADF for loss of light to existing buildings is not generally recommended (appendix F, F7). This is because the use of ADF as a criterion tends to penalise well-daylit existing buildings, because they can take a much bigger and closer obstruction and still remain above the minimum ADFs recommended. The BRE guidelines describe that a good daylight level requires an ADF of 5%, and that levels below this are likely to require the use of substitute lighting. The ADF test is a much less onerous daylight standard than the VSC test, and therefore I am not relying upon the ADF results presented for no.7 Leinster Park in relation to this. My view is formed purely on the analysis with respect to VSC values and while I do not agree with the applicant that BRE target values are achieved in all cases, I am satisfied that where BRE target values are not achieved that the impact is not significant.

12.4.14. In relation to properties 8, 9 and 10 Leinster Park, I note that Mr Walsh was concerned that the applicant had labelled these properties incorrectly in their documents. I am of the view that some confusion has resulted from the window labelling versus the address points for these properties, however, it is clear to me what specific analysis relates to each address. This is presented in a clearer manner in the O'Connor Sutton Cronin St. Clare's Oral Hearing Presentation 20th January 2021 Rev.2, where address points are indicated on the properties. Slight reductions are experienced to all windows as a result of the proposed development, but similarly, these reductions are all within 91-99% of the baseline condition (the permitted scheme), and in my view, this would mean that the difference would not be readily noticeable to occupiers.

12.4.15. No.'s 11, 28 and 29 Leinster Park are also tested in the addendum report, with all but one window to no. 11, achieving over 27% VSC in the proposed condition. The window with a reduction at no.11, is within 96% of the baseline value, and in my view this is a slight reduction and not significant.

12.4.16. For Mount Drummond Square, the results of no.s 35-50 are included in the addendum report. Of the 31 windows tested, 17 retain a VSC of over 27% in the proposed condition. The remaining 14 windows all experience a reduction that is between 91-97% of the baseline value, and therefore acceptable in my view. Similarly, St. Clare's National School experiences a slight reduction to the VSC of 4 out of 7 windows, all over 90(+)% of the baseline value.

12.4.17. The test results for no.'s 79, 81, 83, 85, 87 and 89 Harold's Cross Road are also included in the addendum report. Of the 20 windows tested, 13 have a VSC over 27% in the proposed condition. Of the remaining 7 windows, 5 of these are within 90(+)% of the baseline. There are two windows, one at no.81 and one at no.83 Harold's Cross Road that experience a reduction that is 88% and 86% (respectively) of the former baseline VSC value. This is a moderate reduction in my view. The windows at the Parkview Apartments were also analysed, and 5 of the 8 windows experience a slight reduction to the VSC, all over 90(+)% of the baseline value. The remaining 3 windows experience reductions of between 82% and 85%, which again is moderate in my view. I do not consider the degree of impact upon these windows at no.'s 81, 83 and the Parkview Apartments on Harold's Cross Road to be significant, and as the proposed development is an appropriate scale for this urban site, I consider the impact to be acceptable.

12.4.18. In relation to sunlight, the results for all windows for properties in Leinster Park, Mount Drummond Square and Harold's Cross Road, are presented with respect to Annual Probable Sunlight Hour (APSH). Both the annual and winter results are provided in the addendum report, with the baseline condition taken as the permitted development on the site. Similarly, reductions are seen to a number of windows, most notably on the basis of an annual basis, rather than a winter basis. Similarly to daylight, I do not accept that a reduction within 0.8 times the former value confers adherence to sunlight target standards set out in the guidance, which would in my view be contrary to Appendix F. Instead, I have looked at the degree of reduction experienced and considered its significance. The vast majority of windows that experience a reduction, are still with 90(+)% of the baseline value, and therefore the reduction will not be particularly noticeable in my view. There are 9 windows out of the total 66 tested, that would experience a reduction of less than 90% of the baseline, but within 80(+)% of the baseline value. Similar to my conclusion on

daylight, I do not consider the degree of impact upon the sunlight to these windows would be significant, and as the proposed development is an appropriate scale for this urban site, I consider the impact to be acceptable.

12.4.19. In relation to overshadowing, I note Mr Walsh's submission that the applicant presents overshadowing impacts upon gardens in excess of the targets described in the BRE guidelines, however I think there is some confusion around the discussion on this point. During the course of the Oral Hearing, I asked the applicant to clarify baseline values that were noted with 'NA' in the addendum report. The applicant subsequently updated their presentation material during the course of the Oral Hearing to display this information. They had used 'NA' because target values were achieved in the proposed condition, however I considered that without presentation of the baseline figure, it was unclear if any reduction occurs, regardless of whether the reduction is in accordance with BRE targets. As this information was subsequently presented, I am able to comprehensively consider the degree of impact of the proposed development.

12.4.20. BRE guidelines state that an acceptable condition is where external amenity areas retain a minimum of 2 hours of sunlight over 50% of the area on the 21st March. All private gardens adjoining the proposed development site boundary that could potentially be impacted, were assessed in relation to potential overshadowing. All gardens retain at least 2 hours of sunlight over at least 50% of the area on the 21st March. As such, I am content that the proposed development would not unduly overshadow surrounding amenity spaces.

12.4.21. In relation to tree planting on the boundary of the proposed development site with existing properties, I note Mr Walsh's submission that these should be accounted for in the daylight, sunlight and overshadowing analysis. I also note Ms Campbell's and Mr O'Brien's submission comments in relation to landscaping on the boundary. The BRE guidelines state that:

It is generally more difficult to calculate the effects of trees on daylight because of their irregular shapes and because some light will generally penetrate through the tree crown. Where the effect of a new building on existing buildings nearby is being analysed, it is usual to ignore the effect of existing trees. This is because daylight is

at its scarcest and most valuable in winter when most trees will not be in leaf.”

(Appendix H, para.H1.2).

12.4.22. Specific circumstances are noted in the guidelines where obstruction to daylight as a result of trees might be taken into account, and the methodology for testing this is provided. However, this is generally noted to be in relation to the locating of a new property close to an existing tree (i.e. the effect of an existing tree on the daylight to a proposed development). The guidance goes on to state in relation to sunlight that:

“In assessing the impact of buildings on sunlight in gardens... trees and shrubs are not normally included in the calculation unless a dense belt or group of evergreens is specifically planned as a windbreak or for privacy purposes.” (Appendix H, para.H4).

12.4.23. Whether boundary trees are evergreen or deciduous is therefore a pertinent point and one which Mr Walsh stressed should be explained comprehensively by the applicant. I am satisfied that the current landscaping details submitted with the application describe a mix of evergreen and deciduous trees. It is however common to request final details of a landscaping scheme for a development by condition, and therefore it is possible that the exact location or species of tree may change. I note that for this development site, boundary planting has previously been approved by condition and so details are before me. However, it is possible to discharge the condition again, and therefore for the landscape specification to change. I also note that the locating of trees on the boundary is desired by existing residents. It was clear to me from the submissions to the Oral Hearing, that previously approved tree planting on the boundary that had not yet taken place was considered necessary and requested to be hastened by observers. With this in mind, and in light of the advisory nature of the BRE guidelines, which does not prescribe mandatory targets, I do not consider the inclusion of trees within the daylight and sunlight analysis (including overshadowing) to be required. I accept that it is common practice to discount boundary tree / hedge planting for the purposes of daylight and sunlight analysis as part of planning applications. This is appropriate in my view given that final details of landscaping can alter during the discharge of conditions attached to a consent in general. In relation to this specific application, it is appropriate in my view to ignore the tree planting as part of this analysis as boundaries are not proposed to be planted with 100% evergreen trees (and therefore a dense belt) and tree planting is requested and desired by residents who will rely upon it for screening purposes.

12.4.24. Finally, in relation to the daylight, sunlight and overshadowing analysis submitted by the applicant, I note Mr Walsh's concern that there are a number of matters that he considered to be inconsistencies and / or inaccuracies. I can confirm that I am content that the documentation provided follows the methodology outlined in the BRE guidelines, and includes an appraisal of all relevant surrounding properties and spaces that could be potentially impacted by the proposed development.

12.4.25. Overall, I acknowledge that the proposed development would not meet BRE targets in all instances, however I do not consider there to be significant impact upon surrounding residents' daylight and sunlight as a result. In my opinion, and based upon the analysis presented, the proposed development does not significantly alter daylight, sunlight or overshadowing impacts when compared to the permitted development on the site; which in accordance with BRE guidelines can be accepted as the baseline condition.

12.4.26. Overlooking

12.4.27. I note that the proposal does not include any alterations to the location of blocks and separation to surrounding boundaries and dwellings remain unchanged. However, my assessment considers a complete review of Blocks E, F and G to which the application relates. My assessment of the potential for overlooking of adjacent areas considers the location of windows and balconies/terraces within the proposed development, to habitable room windows and boundaries for surrounding residential dwellings.

12.4.28. At its closest point, Block E is located 3.18m away from the boundary to the north east with St. Clare's Convent National School. As this is not a residential use, I do not consider there to be any adverse impact from overlooking, but in any case, the building line for Block E is at an oblique arrangement with the boundary with the school, and therefore windows do not directly look onto the school site.

12.4.29. At its closest point, Block F is located approximately 7m away from the boundary for the rear gardens of properties in Mount Drummond Square. This distance increases to 22.23m to the rear face of the closest dwelling and its associated windows. I consider the separation to the rear face of dwellings sufficient here, exceeded 20m in all cases. Block F is proposed to be 4 storeys at this closest point and tree planting is shown on the submitted drawings along the boundary. The lower height and inclusion

of tree planting adequately mitigates potential overlooking of the rear garden areas to existing dwellings here. I acknowledge that the proposed development will be visible above this boundary planting, however I consider this visibility to be acceptable.

12.4.30. Separation to the eastern boundary from Block F increases to in excess of 20m as the block extends to the south. In relation to the distance to the southern boundary, Block F is located between 4.5m and +11m from the boundary to the side and rear gardens for properties in Leinster Park. There is no direct back-to-back arrangement between Block F and the properties in Leinster Park that would facilitate overlooking of habitable room windows, however perceived overlooking of garden areas would result without mitigation measures. The submitted drawings indicate tree planting along this southern boundary which would reduce perceived overlooking from Block F into garden areas. In addition, and for the reasons set out in section 12.3 of this report above, I consider it appropriate to reduce the height of Block F in its location closest to the Leinster Park properties, to 4 storeys. This would further mitigate against perceived overlooking at this point. Where the separation distance increase to over 11m, there is adequate separation to the boundary to accommodate the increased height proposed at 6 storeys in my view.

12.4.31. Block G is located between approximately 13.9m and 23.6m away from the boundary to the south with the Leinster Park properties. This is sufficient separation in my view to ensure that adverse impact from overlooking will not result. The western elevation of Block G is located 2.7m from the boundary and 8m away from the rear face of the Park View apartments. This elevation is blank with the exception of a limited number of obscure glazed windows. As a result, I am content that no undue overlooking will result. The remaining blocks on the development site are unaltered by this current application and relationships to existing surrounding dwellings remain unchanged.

12.4.32. Trees

12.4.33. I note a number of third party objections relating to the lack of tree planting on the boundaries for the site, as indicated in the submitted plans. I noted from my visit to the site that boundary tree planting for the site does not yet appear to be established. However, while construction works continue, it would not be expected for all landscaping works to be completed. I am satisfied that conditions to secure the

proposed tree planting along these boundaries prior to the occupation of the development is sufficient.

12.4.34. Precedent Schemes

12.4.35. I note third party references to planning approvals in the area where it was considered appropriate to reduce the height of a development to address residential amenity concerns. I am cognisant of planning approvals in the area and have undertaken a complete assessment of visual amenity (in section 12.3) and potential residential amenity impacts of the proposed development upon the surrounding area (above). In conclusion, I consider these potential impacts to be accepted and adequately mitigated with the inclusion of tree planting and a maximum 4 storey height to the development in specific locations. I am aware of third party concerns regarding the lack of implementation and retention of tree planting, however the application I am presented with indicates the inclusion of tree planting to boundaries. This can be secured by condition, and I have included reference to the same in my recommended order, failure to comply with conditions would be an enforcement matter for the local planning authority.

12.5. **Proposed Residential Standards**

12.5.1. Daylight and Sunlight

12.5.2. I note that the criteria under section 3.2 of the Building Height Guidelines include the performance of the development in relation to daylight in accordance with BRE criteria, with measures to be taken to reduce overshadowing in the development.

12.5.3. A Daylight and Sunlight Report has been submitted with the application dated October 2019. An Oral Hearing was held on the 20th January 2021 and daylight and sunlight was a key element of the Limited Agenda. I refer to the additional material submitted ref. OCSC St. Clare's Oral Hearing Presentation 20th January 2021 Rev.2 and OCSC Daylight Sunlight Addendum.

12.5.4. The Addendum report describes the performance of the development against BRE guidelines in relation to daylight and sunlight. The analysis is for lowest residential level in the proposed blocks as representative of the most constrained area in terms of daylight access, therefore if these rooms pass, it can logically be assumed that rooms above will also pass. The original Daylight and Sunlight Report submitted with

the application only included a sample of rooms within the ground floor units, and did not continue to test rooms above where sample rooms did not achieve BRE target values. In the Addendum report, all rooms at ground floor level have been assessed, and analysis is confirmed with respect to rooms above where necessary.

- 12.5.5. I note submissions from Mr Walsh on the daylight and sunlight analysis for the proposed development and the use of a 1.5% ADF value for open plan living/dining/kitchen areas, instead of a 2% ADF value described in the BRE guidelines for kitchens. Mr Walsh also made submissions in relation to the applicant's transparency regarding the test results for upper floor levels.
- 12.5.6. I reiterate that the targets described in the BRE guidelines are discretionary, not policy. Whether the proposed development meets the recommended standards set out in the guidelines can assist my conclusion as to its appropriateness or quality, but does not dictate an assumption of acceptability.
- 12.5.7. The use of a 1.5% ADF value instead of a 2% ADF value to appraise the daylight level in these open plan rooms is therefore at the discretion of the Planning Authority. In my opinion, it has become a widely relied upon standard for the assessment of applications in Dublin, and I accept the applicant's submission in relation to industry practice concerning this point. The applicant also describes the impact of overhanging balconies in the development, upon both the daylight and sunlight access to those rooms below. Again, I am familiar with this constraint, and in my view, the provision of external private amenity in a development should not be overtly curtailed in order to achieve BRE targets relating to daylight and sunlight. The BRE guidelines describe the ways in which balconies and private amenity space might be designed to reduce potential obstructions, most notably by avoiding locating balconies above living rooms below. However, there are other design advantages that result from a 'stacked' balcony layout that require consideration. It is good practice for balconies to be attached to the main living space for a unit, as is the case in the proposed development. The floorplan in the proposed development is then generally a 'stacked' arrangement, with matching room uses reflected vertically through the scheme. This reduces potential conflict occurring, where a resident might be using a living space directly above another resident's bedroom etc. Allowing for the necessary attachment of a private amenity space to the living space in each unit, it is inevitable that the balconies will then be located in a 'stacked' formation and

above living rooms – thus reducing the available daylight (and sunlight) to these rooms. The external aesthetic and design of a building is also informed by the arrangement of balconies and a 'stacked' arrangement may be preferable for this reason too. Consequentially, I am aware of the arguments that the applicant makes in relation to the use of a 1.5% ADF target instead of 2% ADF target.

- 12.5.8. However, this is a matter of discretion, and there may be situations where a 1.5% ADF is not considered appropriate, particularly where a building is proposed at a density that is too high for its context, and therefore reduced daylight within units might be symptomatic of broader problems in a proposal. I do not consider that to be the case here. The proposed development has a density appropriate for its urban setting and location in Dublin City.
- 12.5.9. I note the applicant's submission in relation to the verbal advice sought from Paul Littlefair, author of the BRE guidelines. In my opinion, this is hearsay and not evidenced through any written submissions received from the applicant. Furthermore, as I understand it, the advice from Mr Littlefair was generic, and not related to the proposed development. It also does not form part of the formal published BRE document and cannot in my view be given any weight. My conclusion on the acceptance of the 1.5% ADF value for open plan living/dining/kitchen areas is therefore only informed by my professional experience, including my understanding of the BRE guidelines and the related British Standard Code of practice for daylighting (BS 8206-2), as well as consideration of the documentary evidence submitted for the application and during the course of the Oral Hearing.
- 12.5.10. Therefore, I accept the applicant's analysis, defaulting to a 1.5% ADF value for open plan living/dining/kitchen areas, instead of the 2% ADF value recommended in the BRE guidelines for kitchens, for the proposed development. Based on this approach, the report demonstrates that a majority of units comply with BRE minimum target daylight levels. The applicant confirms that there are 16 rooms that will not meet the 1.5% ADF target for open plan living/dining/kitchen areas, while all bedrooms in the proposed development will meet the recommended 1% ADF target in the BRE Guidance. The applicant states that this equates to 97.3% of the development complying with standards. The applicant confirmed that this includes rooms on the ground, first, second and third floors that do not meet target values. From the fourth floor, all rooms meet target values. I note Mr Walsh's submission in relation to the

availability of these results and I am content that the applicant has provided the data around this point.

12.5.11. I also note Mr Walsh's comments with respect to the assessment of kitchens as a habitable room. By way of clarity, I can confirm that for planning purposes, a habitable room is a bedroom, living room or other room that could be used for living or sleeping purposes. Bathrooms and kitchens are not considered habitable rooms. Where a kitchen is attached to a living room, that would be considered a habitable room for planning purposes. I note the applicant's comments about discounting the kitchen as it forms a non-habitable space in the open plan living rooms, but that has not been the approach of my assessment.

12.5.12. In relation to sunlight, analysis has been provided in accordance with the BRE guidelines on Annual Probable Sunlight Hours (APSH). The APSH modelling involves assessment of the level of sunlight that reaches a window, then determining the number of windows with an APSH level greater than 25% on an annual basis or 5% on a winter basis. The BRE Guidance states that the main requirement for sunlight is in living rooms and that sunlight is less important to bedrooms and kitchens. The sunlight analysis of the proposed development is for all rooms, and it shows that the percentage of windows that comply with BRE values in the proposed development is 52% on an annual basis and 60% in the winter period. The submitted analysis also demonstrates that using a relaxed APSH level, 60% of windows achieve an APSH greater than 20% on an annual basis. The applicant notes contributory factors that are limiting the overall sunlight performance of the proposed development, specifically the orientation of some windows and projecting balconies in the proposed development. As discussed above, position of a window beneath a balcony invariably means that sunlight levels will be reduced. The Apartments Guidelines ask that balcony areas adjoin living rooms to ensure amenity space has a functional relationship with living space and it is recognised that the balconies serve an essential amenity function for a residential development.

12.5.13. I note Mr Walsh's submission relating to the testing of sunlight to balcony areas instead of habitable room spaces. I am satisfied that the applicant has provided an assessment of sunlight access within the proposed development in accordance with the BRE methodology. The applicant's reference to the sunlight access to balcony areas was, as I understand it, an attempt to indicate that even if a living room for a

unit might not receive high sunlight levels, its balcony area would provide some form of compensation.

12.5.14. Overall, I consider that the level of sunlight received to windows in the proposed development is adequate, in recognition of the integral function of projecting balconies in the design and the north east aspect of some windows.

12.5.15. In relation to overshadowing of amenity areas, the analysis demonstrates that at least 50% of the proposed communal amenity areas as a combined total will receive a minimum of 2 hours sunlight on 21st March, complying with BRE target levels.

12.5.16. Overall, I am satisfied that the proposed development includes good access to daylight and sunlight for future residents. I note Mr Walsh's submission concerning the assessment of only units within the additional storeys proposed compared to the permitted development, rather than a comprehensive assessment of the proposed development. I have not limited my assessment to units within the additional storeys proposed in Blocks E, F and G, and I have considered all units within those Blocks. The remaining blocks on the development site remain unchanged by the proposed development, with the exception of Block J2. Test results for Block J2 within the proposed development site are also presented, and there is no significant reduction in VSC values or APSH values as a result of the increased height to Blocks E, F and G.

12.5.17. Dual Aspect

12.5.18. The Apartment Guidelines state that in central, accessible and some intermediate locations, at least 33% of units should be dual aspect. These types of location are defined in light of their public transport accessibility and walking distance to surrounding centres. The site is located proximate to shops and other conveniences in Harold's Cross Village and is also a short walk to the inner city area. The site is located less than a 2 minute walk to a bus stop serving high frequency inner city bus services. As a result, I consider that the application site can accurately be described as a central / accessible location, as defined under the guidelines. Therefore, a minimum 33% for dual aspect units applies.

12.5.19. The applicant has stated that the number of dual aspect units is approximately 58%, which exceeds the policy requirement set out in the Apartment Guidelines and I have confirmed this in my review of the submitted plans for the application. There are 23

single aspect north facing units in Blocks E and G of the proposed development. This amounts to 11.6% of the 197 units proposed or 9.2% of the total 248 units on the site. The Apartment Guidelines state that north facing single aspect apartments may be considered where overlooking a significant amenity. The single aspect north facing units in Blocks E and G all overlook formal landscape garden amenity areas for the development, as such I consider these to be with the guideline's threshold of acceptability. I therefore conclude that the proposed development is acceptable in relation to aspect.

12.5.20. Private Amenity Space

12.5.21. All units within the proposed development have access to private amenity space in the form of a balcony or terrace, and all of these amenity spaces meet minimum space standards described in the apartment guidelines.

12.5.22. Communal and Public Open Space

12.5.23. The communal amenity areas are formed of the spaces to the rear of Blocks E, F and G. The proposed development does not alter the amenity provision approved as part of the wider site development area. It includes 4,406sqm of communal amenity space, which in addition to those spaces attached to Blocks E, F and G, also include the space between J1 and J2. This exceeds the minimum requirement for the proposed development of a total 248 no. units on the site.

12.5.24. Public open space is proposed in the form of a central courtyard bounded by Blocks D, E, F and G. An area of 4,152sqm is included in the permitted development for the site and is unaltered by the proposed development. This exceeds the minimum requirement under the Development Plan for the proposed development of a total 248 no. units on the site.

12.5.25. Mix

12.5.26. The proposal is formed of 41 no. 1 bed units (21%), 123 no. 2 bed units (62%) and 33 no. 3 bed (17%). I note that the housing mix is in accordance with Sustainable Urban Housing: Design Standards for New Apartments (2018), specifically SPPR1 which allows for the inclusion of up to 50% one-bedroom apartments in a scheme and no minimum requirement for apartments with three or more bedrooms.

12.5.27. Floor Area

- 12.5.28. The individual floor area for apartments meet the standards outlined in the Apartment Guidelines and a majority (54.1%) are greater than 10% larger than minimum standards.
- 12.5.29. Floor to Ceiling Height
- 12.5.30. The proposed development provides for a ground floor height of at least 2.7m at ground floor as prescribed in the Apartment Guidelines.
- 12.5.31. Number of Apartments to a Core
- 12.5.32. The proposed development has a maximum of 6 apartments per core in accordance with policy maximum standards described in the Apartment Guidelines.
- 12.5.33. Privacy
- 12.5.34. The main separation distance between proposed blocks over the central courtyard area exceeds 40m. There are closer adjacencies between the eastern end of Block E to the north elevation of Block F (2.8m), and the southern end of Block F to the east elevation of Block G (6.2m). There is also a 7.2m separation between a portion of the eastern end to Block E and the western end of Block D, however there are no habitable room windows within the west elevation for Block D and therefore no overlooking would result.
- 12.5.35. The north elevation for Block F includes obscure glazed windows in the section of the building that is directly adjacent to Block E. As a result, no undue overlooking will occur between these blocks.
- 12.5.36. I note that there are a minimum number of windows within the east elevation of Block G, with windows here forming a secondary window to open plan living spaces. A similar elevation treatment is included on the western end of Block G and windows in that elevation are obscure glazed to prevent overlooking to the adjacent existing apartment block outside of the site. However, in the east elevation, windows are not shown to be obscure glazed. As a result, it is clear that due to the 6.2m separation between this elevation and windows within Block F there will be some overlooking. However, I note that this is the approved arrangement for the blocks and that there are only a minimum number of windows within the Block G elevation which are also secondary windows. As a result, I do not consider the extent of overlooking proposed to be significant.

12.6. Traffic and Transport

- 12.6.1. I note third party objections raised to the proposed development on the basis of the low car parking level and potential impact on surrounding parking levels in surrounding streets, as well as concern that a cumulative assessment of the impact of the total development upon surrounding networks is required.
- 12.6.2. A Traffic Impact and Parking Strategy Report has been submitted with the application. This describes the potential traffic impact associated with the proposed alterations to Blocks E, F and G and the rationale for the proposed car parking provision to serve the development. The report considers the cumulative impact of the total development on the site, in light of the modifications under this current application. The report concludes that the Traffic Impact Assessment for the site showed an insignificant impact on the operation of the local road network. The Planning Authority Transport Division have confirmed they have no objections to the proposed development, and have recommended conditions, which I have included in my recommended order below.
- 12.6.3. Car Parking
- 12.6.4. The development previously approved on the site contained 154 resident basement car parking spaces, alongside 3 car club spaces for residents and 3 creche staff spaces, all at basement level. At surface level 4 short term set down spaces are permitted. The proposed application will not increase the quantum of car parking at the site. There is a change in allocation proposed to the car club spaces, uplifting this provision by a single space, to result in 4 car club spaces, with an associated reduction in the number of residential car parking spaces by 1, resulting in a total of 153 residential spaces. The overall car parking provision of 160 spaces at basement level and 4 set-down surface level spaces remains unchanged by this application.
- 12.6.5. As a result of the increase in the number of units proposed, the resulting car parking provision is a ratio of 0.62 spaces per dwelling based upon the provision of 153 residential spaces to 248 units. This increases to 0.65 spaces per dwelling when considering the additional car club spaces for residents use. The Dublin City Development Plan 2016-2022 describes a maximum car parking standard of 1.5 spaces per dwelling in the area that the site is located in. The proposed development does not exceed this standard. The Apartment Guidelines states that in central and /

or accessible locations, such as the application site, the default policy for car parking is to be minimised, substantially reduced or wholly eliminated in certain circumstances. The submitted Traffic Impact and Parking Strategy Report describes in detail the established level of car parking ownership in the area as well as the site accessibility to alternative methods of transport. I am satisfied that the site is adequately served by public transport and the development includes adequate provision for car club spaces and cycle storage, to justify a parking ratio of 0.62.

12.6.6. Cycle Parking

12.6.7. The proposed development includes 283 no. secure bicycle parking spaces, to be provided at basement level, which is an increase of 57 on the already permitted 226 no. spaces. This exceeds standards under the Dublin City Development Plan 2016-2022. The Apartment Guidelines state a general standard of 1 cycle space per bedroom to be applied, however this is at the discretion of the Planning Authority. I am satisfied that the 283 no. bicycle parking spaces will be sufficient provision for the total 248 no. units on the site. This is in light of the short walking distance of the site to the inner city area, as well as proximity to surrounding public transport.

12.7. **Material Contravention**

12.7.1. I note third party representations that raise concerns regarding the authority of the Board to determine this application which materially contravenes the development plan. The applicant has submitted a Statement of Material Contravention with Dublin City Development Plan 2016-2022 with the application. The public notices make reference to a statement being submitted indicating why permission should be granted having regard to the provisions s.37(2)(b). There is one issue raised in the applicant's Material Contravention statement, it relates to building height.

12.7.2. I have considered the issue raised in the applicants submitted statement and advise the Board to invoke the provisions of s.37(2)(b) of the 2000 Act (as amended).

12.7.3. I draw the Board's attention to the height of the proposed development which exceeds the DCP height strategy for this area of 16m, rising to a maximum of 19.615m (6 storeys, with lift overrun above). I note that the applicant's Material Contravention Statement has erroneously referred to the maximum height of the development as 24.25m. This is clearly an error in my view as the drawings specify a maximum 6 storey height, with annotated dimensions at 19.615m. As a result, I am

clear in my assessment that the maximum height proposed is 19.615m, which exceeds the 16m datum under the Dublin City Development Plan 2016-2022. The previous consents on the site were below the 16m datum.

- 12.7.4. I have considered the Statement of Material Contravention submitted with the application which describes the justification for the proposed height. I consider that the site is appropriate for increased height in light of guidance in the Urban Development and Building Height, Guidelines for Planning Authorities. Particularly in consideration of the Development Management Criteria in section 3.2 of the guidelines relating to proximity to high quality public transport services, character of the location, the contribution of the proposal to the street, the avoidance of uninterrupted walls, contribution to public spaces, compliance with flood risk management guidelines, improvement of legibility and daylight and sunlight considerations alongside performance against BRE criteria. My assessment of the development against the section 3.2 criteria in the Building Height Guidelines is set out in detail in section 12.3 above, including related assessments in section 12.4, 12.5 and 12.9 of this report. Specific assessments have also been provided to assist my evaluation of the proposal, specifically CGI visualisations and photomontages of views, Conservation Compliance Report, Landscape and Visual Appraisal, and Daylight and Sunlight Report.
- 12.7.5. Section 37(2)(a) of the Planning and Development Act 2000 (as amended), states that the Board may decide to grant a permission even if the proposed development contravenes materially the development plan. Section 37(2)(b) (i)-(iv) lists the circumstances when the Board may grant permission in accordance with section 37(2)(a).
- 12.7.6. Under section 37(2)(b) (i) the proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and its potential to contribute to the achievement of the Government's policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

12.7.7. Under section 37(2)(b)(iii) permission for the development should be granted having regard to the Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy 2019-2031, which seeks to increase densities on appropriate sites within Dublin City and Suburbs. In addition, permission for the development should be granted having regard to guidelines under section 28 of the Act, specifically SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines. I refer the Board to section 12.3 and other related sections of this report (12.4, 12.5 and 12.9), that address these criteria in detail.

12.7.8. Following reflection of the above, I am satisfied that a grant of permission, that may be considered to materially contravene the Dublin City Development Plan is justified in this instance. I have incorporated specific reasoning and justification having regard to s.37(2)(b) of the 2000 Act (as amended) into the Conclusion and Recommended Order for the Board's consideration at the end of this report.

12.8. Screening for Environmental Impact and Appropriate Assessment

12.8.1. Environmental Impact Assessment

12.8.2. I note third party responses to the application that raise concern regarding the need for an EIA screening of the complete development and suggesting that a piecemeal approach has been taken.

12.8.3. The application is accompanied by an EIA Screening in the submitted Environmental Report which has regard to Schedule 7A of the regulations. I have completed a screening assessment as set out in Appendix A which considers the development as a whole and in light of the modifications under this current application. As a result of this assessment, I recommend to the Board that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required. The conclusion of this assessment is as follows:

12.8.4. Having regard to: -

(a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,

12.8.5. (b) the location of the site with a zoning on the northern half of the subject site zoned Z12 and the southern portion of the lands zoned Z1, with the objective for Z12 lands "to ensure existing environmental amenities are protected in the predominantly residential future use of these lands", and the objective for Z1 lands "to protect, provide and improve residential amenities", with Residential being a permitted in principle use in Z12 and Z1 lands in the Dublin City Development Plan 2016-2022 and the results of the Strategic Environmental Assessment of the plan,

(c) The existing use on the site and pattern of development in surrounding area;

(d) The availability of mains water and wastewater services to serve the proposed development,

(e) the location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended)

(f) The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003),

(f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and

(g) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction Waste Management Plan, Construction Traffic Management Plan, Environmental Management Plan, the Engineering Services Report with appended Flood Risk Assessment, and the Operational Waste Management Plan.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required.

12.8.6. Appropriate Assessment

12.8.7. An Appropriate Assessment Screening Report (dated October 2019) was submitted with the application. I have had regard to the contents of same. This report concludes that the possibility of any significant effects on any European Sites arising from the proposed development are not likely to arise, whether considered on its own or in combination with the effects of other plans or projects.

12.8.8. The AA screening report confirms that the proposed development does not involve any changes to the overall drainage design approved under the previously permitted development. The permitted design has more than sufficient capacity to cater for the proposed units.

12.8.9. The combined sewer terminates at Ringsend Waste Water Treatment Plant (WWTP). The Ringsend WWTP has been granted permission under section 37G of the Planning and Development Act 2000 (Board Order ABR-301798-18), 10-year permission for development comprising revisions and alterations to the existing and permitted development at the Ringsend Wastewater Treatment Plant and for a new Regional Biosolids Storage Facility, being two components of an integrated wastewater treatment facility. These works will bring the capacity of the Wastewater Treatment Plant from its current 1.9 million PE to 2.4 million PE.

12.8.10. A total of 14 Natura 2000 sites were identified within the AA Screening Report with potential of hydrological connection to the proposed development. A list of the sites is provided below, with a detailed description of their conservation objections provided subsequently.

Table 12.9.1: Natura 2000 Sites

Natura 2000 Site and Distance from Subject Site:	Conservation Objectives:	Qualifying Interests:
IE0000210 South Dublin Bay SAC 4.8 km	To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide in South Dublin Bay SAC, which is defined by the following list of targets: -The permanent habitat area is stable or increasing,	1140 Mudflats and sandflats not covered by seawater at low tide *1210 Annual vegetation of drift lines *1310 Salicornia and other annuals colonising mud and sand *2110 Embryonic Shifting dunes

Natura 2000 Site and Distance from Subject Site:	Conservation Objectives:	Qualifying Interests:
	<p>subject to natural processes.</p> <p>-Maintain the extent of the Zostera –dominated community, subject to natural processes.</p> <p>-Conserve the high quality of the Zostera –dominated community, subject to natural processes</p> <p>-Conserve the following community type in a natural condition: Fine sands with <i>Angulus tenuis</i> community complex.</p>	
IE0000206 North Dublin Bay SAC 8.1km	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	<p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1210 Annual vegetation of drift lines</p> <p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>)</p> <p>1395 Petalwort <i>Petalophyllum ralfsii</i></p> <p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>2110 Embryonic shifting dunes</p> <p>2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i>(white dunes)</p> <p>2130 Fixed coastal dunes with herbaceous vegetation</p> <p>2190 Humid dune slacks</p>
IE0002122 Wicklow Mountains SAC 9.5 km	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected. The favourable conservation status of a species is achieved when:	<p>3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>)</p> <p>3160 Natural dystrophic lakes and ponds</p> <p>4010 Northern Atlantic wet heaths with <i>Erica tetralix</i></p> <p>4030 European dry heaths</p>

Natura 2000 Site and Distance from Subject Site:	Conservation Objectives:	Qualifying Interests:
	<p>-population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and</p> <p>-the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and</p> <p>-there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.</p>	<p>4060 Alpine and Boreal heaths</p> <p>6130 Calaminarian grasslands of the <i>Violetalia calaminariae</i></p> <p>6230 Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)</p> <p>7130 Blanket bogs (if active bog)</p> <p>8110 Siliceous scree of the montane to snow levels</p> <p>*8210 Calcareous rocky slopes with chasmophytic vegetation</p> <p>*8220 Siliceous rocky slopes with chasmophytic vegetation</p> <p>*91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>*1355 <i>Lutra lutra</i> (Otter)</p>
<p>IE0001209 Glenasmole Valley SAC 9.5 km</p>	<p>To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected. The favourable conservation status of a species is achieved when:</p> <p>-population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and</p> <p>-the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and</p> <p>-there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.</p>	<p>6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco Brometalia</i>) (important orchid sites)</p> <p>6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</p> <p>7220 Petrifying springs with tufa formation (<i>Cratoneurion</i>)</p>

Natura 2000 Site and Distance from Subject Site:	Conservation Objectives:	Qualifying Interests:
IE0003000 Rockabill to Dalkey Island SAC 12.5 km	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	1170 Reefs 1351 Harbour porpoise <i>Phocoena phocoena</i>
IE0000199 Baldoyle Bay SAC 12.9 km	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	Salicornia and other annuals colonising mud and sand (1310) Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) (1330) Mediterranean salt meadows (<i>Juncetalia maritimi</i>)(MSM) (1410) *Mudflats and sandflats not covered by seawater at low tide (1140)
IE0000202 Howth Head SAC 13.7 km	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	(1230) Vegetated sea cliffs of the Atlantic and Baltic coasts (4030) European dry heaths
IE00001398 Rye Water Valley/Carton SAC 14.7 km	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected	7220 Petrifying springs with tufa formation (<i>Cratoneurion</i>)* 1014 Narrow-mouthed Whorl Snail (<i>Vertigo angustior</i>) 1016 Desmoulin's Whorl Snail (<i>Vertigo moulinsiana</i>)
IE001209 Knocksink Wood SAC 3.3km	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected	7220 Petrifying springs with tufa formation (<i>Cratoneurion</i>) 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) *91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles
IE0004024 South Dublin Bay and River Tolka Estuary SPA 4.6 km	The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall	Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) Oystercatcher (<i>Haematopus ostralegus</i>)

Natura 2000 Site and Distance from Subject Site:	Conservation Objectives:	Qualifying Interests:
	maintenance of favourable conservation status of those habitats and species at a national level.	Ringed Plover (<i>Charadrius hiaticula</i>) Grey Plover (<i>Puvialis squatarola</i>) Knot (<i>Calidris canutus</i>) Sanderling (<i>Calidris alba</i>) Dunlin (<i>Calidris alpina</i>) Bar-tailed Godwit (<i>Limosa lapponica</i>) Redshank (<i>Tringa totanus</i>) Black-headed Gull (<i>Croicocephalus ridibundus</i>) Roseate Tern (<i>Sterna dougallii</i>) Common Tern (<i>Sterna hirundo</i>) Arctic Tern (<i>Sterna paradisaea</i>) Wetlands & Waterbirds
IE0004006 North Bull Island SPA 7.6 km	The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.	Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) Oystercatcher (<i>Haematopus ostralegus</i>) Teal (<i>Anas crecca</i>) Pintail (<i>Anas acuta</i>) Shoveler (<i>Anas clypeata</i>) Shelduck (<i>Tadorna tadorna</i>) Golden Plover (<i>Pluvialis apricaria</i>) Grey Plover (<i>Pluvialis squatarola</i>) Knot (<i>Calidris canutus</i>) Sanderling (<i>Calidris alba</i>) Dunlin (<i>Calidris alpina</i>) Black-tailed Godwit (<i>Limosa limosa</i>) Bar-tailed Godwit (<i>Limosa lapponica</i>) Curlew (<i>Numenius arquata</i>) Redshank (<i>Tringa tetanus</i>) Turnstone (<i>Arenaria interpres</i>) Black-headed Gull (<i>Larus ridibundus</i>) Wetlands and Waterbirds
IE0004040 Wicklow Mountains SPA 9.8 km	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	Falco columburius (Merlin) A098 Falco peregrinus (Peregrine) A103
IE0004016 Baldoyle Bay SPA 12.9 km	To maintain or restore the favourable conservation condition of the bird species	A046 Brent Goose (<i>Brunta bernicla hrota</i>) A048 Shelduck (<i>Tadorna tadorna</i>)

Natura 2000 Site and Distance from Subject Site:	Conservation Objectives:	Qualifying Interests:
	listed as Special Conservation Interests for this SPA.	A137 Ringed Plover (<i>Charadrius hiaticula</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) A141 Grey Plover (<i>Pluvialis squatarola</i>) A157 Bar-tailed Godwit (<i>Limosa lapponica</i>) A999 Wetlands and Waterbirds
IE0004172 Dalkey Islands SPA 13.5 km	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	Roseate Tern (<i>Sterna dougallii</i>) Common Tern (<i>Sterna hirundo</i>) Arctic Tern (<i>Sterna paradisaea</i>)

* Note: the submitted AA does not include a complete list of the qualifying interests for this SAC, however my assessment has been informed by the NPWS website, which also includes the qualifying interests asterisked.

12.8.11. The proposed development is not situated within or adjacent to a Natura 2000 site. No Annex species or habitats were noted on the site or in its immediate environs. The proposed site is located in a urban environment 4.6 km from the nearest Natura 2000 site. Watercourses and surface runoff are seen as the main potential pathway for impacts on Natura 2000 sites. However, the site is not proximate to and does not have a direct pathway to watercourses that could act as potential vectors for impact on Natura 2000 sites. There is no direct hydrological pathway from the proposed development site a Natura 2000 site. There is an indirect pathway to Ringsend WWTP. Foul water from the development will be processed in the Ringsend Treatment works.

12.8.12. Taking into consideration the effluent discharge from the proposed development works, the distance between the proposed development site to designated conservation sites, lack of direct hydrological pathway or biodiversity corridor link to conservation sites and the dilution effect with other effluent and surface runoff, it is concluded that this development that would not give rise to any significant effects to designated sites. The construction and operation of the proposed development will not impact on the conservation objectives of features of interest of Natura 2000 sites.

12.8.13. An Environmental Management Plan has also been submitted with the application and describes the incorporation of best practise measures during works on the site. This includes standard operational procedures to control the possibility of potential pollutants exiting the site during construction. These measures are not designed or intended specifically to mitigate any putative potential effect on a Natura 2000 site. They constitute the standard approach for construction works in an urban area. Their implementation would be necessary for a housing development on any site in order to protect the surrounding environs regardless of proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on a site whether or not they were explicitly required by the terms or conditions of a planning permission.

12.8.14. I conclude that the proposed development would not be likely to have any significant effects on any Natura 2000 site, either directly or indirectly or in combination with other plans and projects. This conclusion is consistent with the appropriate assessment screening report submitted with the application.

12.8.15. AA Screening Conclusion

12.8.16. It is reasonable to conclude that on the basis of the information on 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 European Sites: Glenasmole Valley SAC, Wicklow Mountains SAC, Rye Water Valley/Carton SAC, South Dublin Bay SAC, North Dublin Bay SAC, Knocksink Wood SAC, Wicklow Mountains SPA, South Dublin Bay and River Tolka Estuary SPA, Howth Head SAC, Baldoyle Bay SAC/SPA or any European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

12.9. **Other Issues**

12.9.1. Flood Risk / Surface Water Run-off / Drainage

12.9.2. The approved Flood Risk Assessment as part of the previously approved development on the site (Reg. Ref. 4040/17, ABP Ref.301835-18) is included as part of the Engineering Services Report for the current application. The Flood Risk Assessment concludes that the site is outside the areas of potential risk for fluvial and coastal flooding. Pluvial flooding, ground water flooding and flooding arising from

existing drainage infrastructure have also been assessed. The proposals under this current application do not alter any arrangements relating to flood risk mitigation or impact the conclusions under the approved Flood Risk Assessment for the development on the site. DCC Drainage Division have concluded that there are no objections to the proposed development with the incorporation of recommended mitigation measures as outlined in conditions and my recommended order reflects this. I consider that the proposed development is acceptable in terms of flood risk management and prevention.

12.9.3. Archaeology

12.9.4. A Final Archaeological Report has been submitted with the application. This provides a detailed evaluation of the archaeological potential and history of the site. The archaeological resolution of development sites on former mother and bay homes and orphanages (such as this one) is covered in detail within the submitted report. There has been no evidence of in situ burials on the site, however as potential remains, extreme caution has been taken with ground works on the site. This report forms part of the details approved under conditions for the permitted development on the site. This current application does not alter the ground works previously approved and the modifications are above ground only. As a result, I consider the submitted details to be acceptable.

12.9.5. Childcare Provision

12.9.6. I note an objection stating concerns that the proposed childcare provision for the development is insufficient. The submitted Statement of Consistency with the application describes the applicable standards for childcare provision in developments. This amounts to a requirement for 49 no. childcare places in the total development of 248 units. The proposed development does not increase the size of the creche included in Block G, however this can accommodate between 50 to 85 children, and therefore I consider that adequate provision for childcare is accommodated in the development.

12.9.7. Energy and Sustainability

12.9.8. A Sustainability Report / Energy Statement has been submitted with the application. This describes the energy performance strategy that is to incorporate passive design measures to improve the energy efficiency of the building fabric. In addition to this, it

is proposed to incorporate CHP with gas boilers and mechanical ventilation with heat recovery to provide efficient energy sources, and solar photovoltaics to provide renewable energy for the development. The report states that Green roofs are also to be considered for the development. I note that the submitted drawings do not identify locations for photovoltaics or green roofs, and therefore have included a condition in my draft recommended order to require further detail of the same.

12.9.9. Part V

12.9.10. The applicant has submitted Part V proposals as part of the application documents. 25 no. apartments are identified (10%) of the total 248 no. units on the site, which is in compliance with Part V of the Planning and Development Act 2000 (as amended). The Planning Authority Housing Department have confirmed that St. Clare's GP3 Limited has engaged with the department and are aware of the Part V obligations pertaining to this site if permission is granted. I note that elected members have expressed concerns regarding compliance with Part V requirements, however no objections have been raised by the Planning Authority or Housing Department. As a result, I consider the Part V proposals submitted to be acceptable.

13.0 Conclusion and Recommendation

13.1. The proposed construction of Blocks E, F and G up to a maximum of 6 storeys in height, resulting in a total of 248 no. units on the site, is acceptable in principle, having regard to the relevant Z1 and Z12 zoning in the Dublin City Development Plan 2016-2022; where residential is a permissible use, and in light of the context of previously permitted development on the site. The provision of increased height and higher density residential development at this location is also desirable in my view, with regard to its central / accessible location and proximity to high frequency transport services and surrounding infrastructure. The height is acceptable at a maximum 6 storey height, with a 4 storey transitional element in Block F.

13.2. With a height of 4 storeys with set-back 6 storey to Block F as perceived by existing residents to the east and south, I am satisfied that the proposed development would have an acceptable height, bulk and mass for the site. I am also satisfied that with this amendment, the development would not have any unacceptable adverse impacts on the amenities of the surrounding area. The future occupiers of the

scheme will also benefit from an acceptable standard of internal amenity. The overall provision of car parking and cycle parking is considered acceptable. I am satisfied the future occupiers of the scheme will not be at an unacceptable risk from flooding, and the proposal will not increase the risk of flooding elsewhere.

13.3. Having regard to the above assessment, I recommend that section 9(4)(a) of the Act of 2016 be applied and that permission be GRANTED for the proposed development, subject to conditions, for the reasons and considerations set out below.

14.0 Recommended Order

Planning and Development Acts 2000 to 2019

Planning Authority: Dublin City Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, following High Court order perfected on 27th Day of October 2020 (Judicial Review 2020 No 266 JR). The application, plans and particulars, are submitted by St Clare's GB3 Limited care of John Spain Associates. Following Board Direction BD-007141-20 a Limited Agenda Oral Hearing was held on 20th January 2021.

Proposed Development:

The alteration of Blocks E, F, and G, currently under construction.

- Block E shall be part 5 and part 6 storeys. It shall include 72 no. apartments (16 no. 1 bed, 39 no. 2 bed, and 17 no. 3 bed units). Additional 7 No. Units.
- Block F shall be part 4, part 5, and part 6 storeys and shall include 57 no. apartments (13 no. 1 bed, 38 no. 2 bed, and 6 no. 3 bed units). Additional 9 No. Units.
- Block G shall be 6 storeys in height. It shall include 68 no. apartments, with 12 no. 1 bed, 46 no. 2 bed, and 10 no. 3 bed units. Additional 12 No. Units.

The total number of units proposed under this application is 197. The total no. of apartment units on site, including permitted Blocks A, B, C, D, J1, and J2, will increase from 220 no. to 248no.

Decision

Grant permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

15.0 Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the location of the site in the established urban area of Dublin City in an area zoned for residential;
- (b) the policies and objectives of the Dublin City Development Plan 2016-2022;
- (c) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (d) Project Ireland 2040 The National Planning Framework;
- (e) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- (f) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018 and particularly Specific Planning Policy Requirement 3;

(g) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020;

(h) Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013;

(i) Architectural Heritage Protection- Guidelines for Planning Authorities 2011;

(j) The nature, scale and design of the proposed development and the availability in the area of a wide range of social, transport and water services infrastructure;

(k) The pattern of existing and permitted development in the area;

(l) The planning history of the site (including extant permission and advanced construction works on the site) and within the area;

(m) The submission and observations received in response to consultation on the application;

(n) The oral and written submissions to the Oral Hearing on 20th January 2021 and further written submissions received up to the 22nd January 2021 from observers;

(o) Section 37(b)(2) of the Planning and Development Act 2000, as amended, whereby the Board is not precluded from granting permission for a development which materially contravenes a Development Plan;

(p) The Chief Executive Report from the Planning Authority; and

(q) The report of the inspector.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Appropriate Assessment Screening document submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in

the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to: -

(a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,

(b) the location of the site with a zoning on the northern half of the subject site zoned Z12 and the southern portion of the lands zoned Z1, with the objective for Z12 lands “to ensure existing environmental amenities are protected in the predominantly residential future use of these lands”, and the objective for Z1 lands “to protect, provide and improve residential amenities”, with Residential being a permitted in principle use in Z12 and Z1 lands in the Dublin City Development Plan 2016-2022 and the results of the Strategic Environmental Assessment of the plan,

(c) The existing use on the site and pattern of development in surrounding area;

(d) The availability of mains water and wastewater services to serve the proposed development,

(e) the location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended)

(f) The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),

(f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and

(g) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction Waste Management Plan, Construction Traffic Management Plan, Environmental Management Plan, the Engineering Services Report with appended Flood Risk Assessment, and the Operational Waste Management Plan.

the Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

Conclusions on Proper Planning and Sustainable Development:

The Board considered that, subject to compliance with the conditions set out below that the proposed development would constitute an acceptable quantum and density of development in this accessible inner-city location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian safety. The proposal would not give rise to flooding in the area and would provide an acceptable form of residential amenity for future occupants. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area. In coming to this conclusion, specific regard was had to the Chief Executive Report from the Planning Authority.

The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the statutory plans for the area, a grant of permission could materially contravene Dublin City Development Plan 2016-2022 (DCP) in relation to building height. Specifically, as a result of the DCP height strategy for this area of 16m for residential development, while the proposed development has a maximum height of approximately 19.6m (6 storeys).

The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the City Development Plan would be justified for the following reasons and consideration.

In relation to section 37(2)(b) (i) of the Planning and Development Act 2000 (as amended):

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and its potential to contribute to the achievement of the Government's policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

In relation to section 37(2)(b) (iii) of the Planning and Development Act 2000 (as amended):

Under section 37(2)(b)(iii) permission for the development should be granted having regard to the Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy 2019-2031, which seeks to increase densities on appropriate sites within Dublin City and Suburbs. In addition, permission for the development should be granted having regard to guidelines under section 28 of the Act, specifically SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines.

16.0 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. In default of agreement, such issues may be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall comply with the terms and conditions governing the overall site under Reg. Ref. 2186/15 / PL29S.245164, unless modified or otherwise required by this grant of planning permission or any conditions contained in this schedule.

Reason: In the interest of orderly development and clarity.

3. The proposed development shall be amended as follows:

(a) Removal of the eastern extent of the 5th storey (4th floor) in Block F so that the maximum height of the development on the eastern edge is 4 storeys, and reinstatement of approved 5th storey (4th floor) plan (under Reg. Ref. 2186/15 / PL29S.245164) to create a consistent 4 storey height along the eastern edge of Block F. Block F becomes a 4 and 6 storey building as a result of this amendment.

(b) Photovoltaics and green roofs shall be provided on roof areas.

As a consequence of the above amendments the total number of units permitted is 245 no. residential units. Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development above 4th storey level.

Reason: In the interests of visual and residential amenity.

4. (a) The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to occupation of the development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within 3 years of planting shall be replaced in the first planting season thereafter.

(b) Where feasible the planting of native pollinator friendly species of plants and trees shall be incorporated into the landscape plan.

(c) Prior to construction above 5th storey level of the proposed development, the route of pedestrian access from Harold's Cross Road to the scheme's public open space shall be submitted for the written agreement of the planning authority.

Reason: In the interest of conservation, residential and visual amenity.

5. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

6. Prior to commencement of development above 5th storey, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

7. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the Planning Authority prior to occupation of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste, and in particular recyclable materials, in the interest of protecting the environment.

8. The following revised details shall be submitted to and agreed in writing with the planning authority:

- (i) Prior to the commencement of the development above 5th storey level, an updated Construction Management Plan prepared by the main contractor. This plan shall outline any updates and amendments to construction practice for the development, construction phasing and programme, the site traffic management plan including off-site traffic routing, hours of working, noise and dust management measures and off-site disposal of construction/demolition waste.
- (ii) Prior to the commencement of the development above 5th storey level, the applicant shall liaise with National Transport Authority and the relevant bodies for the relocation of the existing bus stop/shelter adjacent to the application site. A separate planning application shall be submitted for the proposed relocation of the bus stop/shelter. All costs associated with works shall be at the applicant's expense.
- (iii) Within six months of the date of the decision, any alterations to the public road including the provision of the proposed new entrance shall be agreed in writing with the planning authority. Details of the materials proposed in public areas shall be in accordance with the document Construction Standards for Roads and Streets Works in Dublin City Council. All works on the public road shall be carried out at the expense of the applicant.
- (iv) Pedestrian priority design measures shall be provided at the basement access and the access road to the creche drop off area in order to facilitate pedestrian movement within the proposed development.

- (v) Road markings or signage etc. shall be provided at the proposed basement access ramp to communicate the 'shared surface' nature of the ramp to all users, specifically the drivers.
- (vi) Car parking spaces shall be permanently allocated to the proposed use and shall not be sold, rented or otherwise sub-let or leased to other parties. 4 no. car parking spaces within the development shall be permanently allocated to Car Club use.
- (vii) Cycle parking shall be secure, conveniently located, sheltered and well lit. Key / fob access shall be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked. 2 no. of sheltered and secure cycle spaces shall be allocated to creche staff and shower and changing facilities shall also be provided as part of the development.
- (viii) Prior to occupation of the development a full mobility management framework / plan shall be carried out for written agreement of the planning authority. Commitments made in the mobility management plan shall be fully adhered to.
- (ix) All costs incurred by the City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.
- (x) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: In the interest of traffic and public safety.

9. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

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 residential amenities of property in the vicinity and the visual amenities of the area.

11. Prior to the commencement of the development above 5th storey level, proposals for a development name, apartment numbering scheme, creche signage and all other associated signage for the development, shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development.

12. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential

13. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

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

14. Prior to commencement of development above 5th storey level, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

15. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development above 5th storey or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

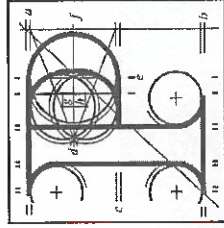
16. Prior to commencement of development above 5th storey, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance 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 An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

DECISION

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17.0 Appendix A: EIA Screening Form



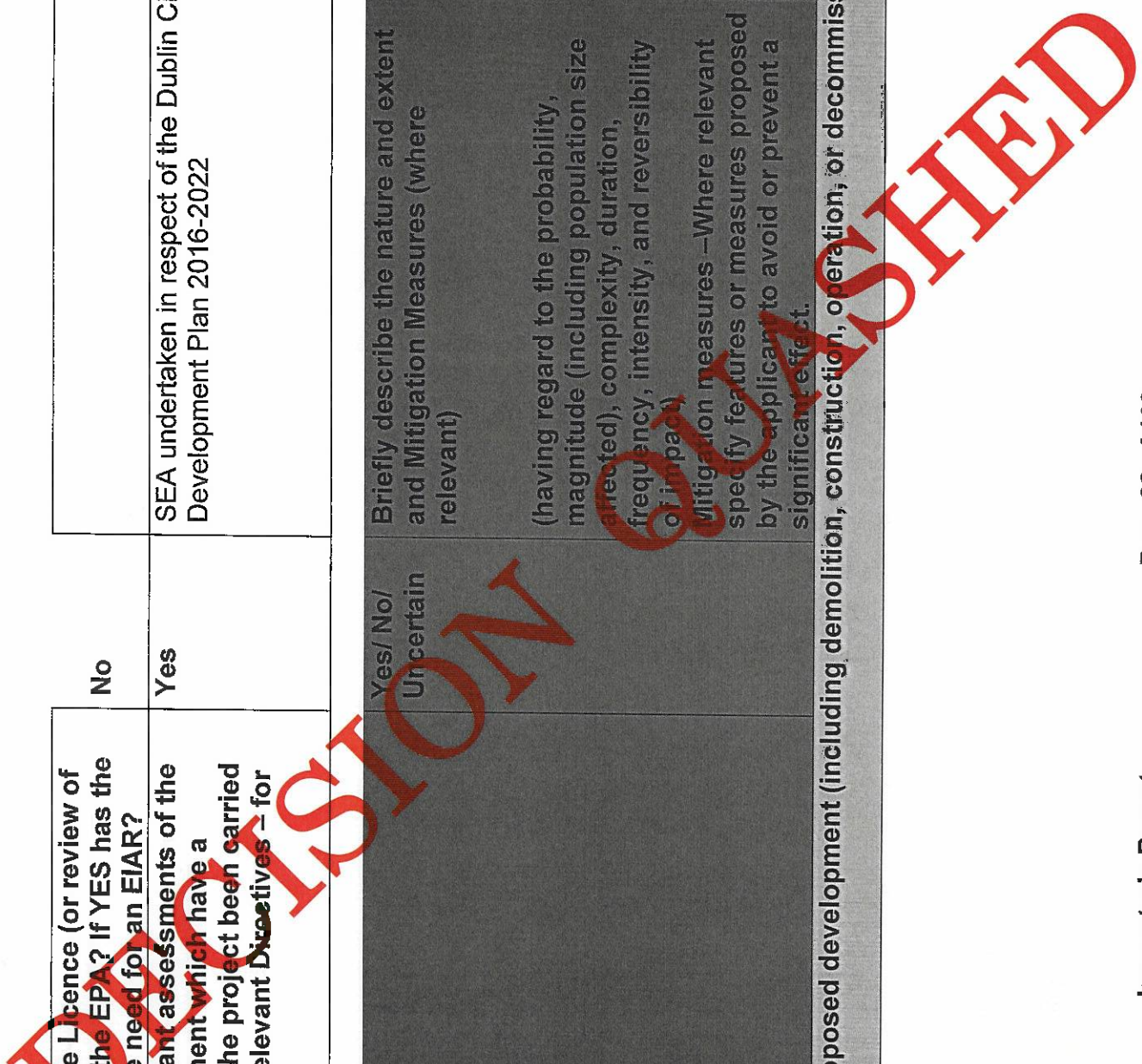
An Bord Pleanála

EIA - Screening Determination for Strategic Housing Development Applications

A. CASE DETAILS	
An Bord Pleanála Case Reference	ABP-308533-20
Development Summary	Alterations to previously permitted development Reg. Ref: 2186/13 (PL29S.245164) increasing the total number of units from 220 no. units to 248 no. units.
1. Has an AA screening report or NIS been submitted?	Yes / No / N/A Yes
	An EIA Screening Report (Environmental Report) and a Stage 1 AA Screening Report was submitted with the application

2. Is a IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?	No	
3. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA	Yes	SEA undertaken in respect of the Dublin City Council Development Plan 2016-2022

B. EXAMINATION	Yes/ No/ Uncertain	Briefly describe the nature and extent and Mitigation Measures (where relevant) (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact) Mitigation measures –Where relevant specify features or measures proposed by the applicant to avoid or prevent a significant effect.	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain
1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)			



<p>1.1 Is the project significantly different in character or scale to the existing surrounding or environment?</p>	<p>No</p>	<p>The residential use proposed and the size and design of the proposed development would not be unusual in the context of an urban residential area in Dublin City.</p>	<p>No</p>
<p>1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?</p>	<p>Yes</p>	<p>Such changes in land use and form have already taken place as part of implementation of previous planning approvals on the site and are not considered to be out of character with the pattern of development in the surrounding city area.</p>	<p>No</p>
<p>1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?</p>	<p>Yes</p>	<p>Construction materials will be typical of such urban development. Redevelopment of this brownfield site will not result in any significant loss of natural resources or local biodiversity.</p>	<p>No</p>
<p>1.4 Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p>	<p>Yes</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances. Such use will be typical of construction sites. Any impacts would be local and temporary in nature and implementation of measures described in the submitted Construction Waste and Environmental Management Plans will satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p>	<p>No</p>

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<p>1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Yes</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances and give rise to waste for disposal. Such use will be typical of construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature and implementation of a Construction Waste Management Plan will satisfactorily mitigate potential impacts.</p> <p>Operational waste will be managed via a Operational Waste Management Plan to obviate potential environmental impacts. Other significant operational impacts are not anticipated.</p>	<p>No</p>
<p>1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>No</p>	<p>No significant risk identified. Works have already commenced on the site as part of implementation of previous planning consents. This application does not involve any alteration to groundworks. A submitted Construction Waste Management Plan and Environmental Management Plan outline mitigation of any potential impacts.</p>	<p>No</p>

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<p>1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p>	<p>Yes</p>	<p>Potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised, short term in nature and their impacts may be suitably mitigated by the operation of measures described in the Construction Waste Management Plan and Environmental Management Plan. Management of the scheme in accordance with an agreed Management Plan will mitigate potential operational impacts.</p>	<p>No</p>
<p>1.8 Will there be any risks to human health, for example due to water contamination or air pollution?</p>	<p>No</p>	<p>Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of a Construction Waste Management Plan and Environmental Management Plan would satisfactorily address potential impacts on human health. No significant operational impacts are anticipated.</p>	<p>No</p>
<p>1.9 Will there be any risk of major accidents that could affect human health or the environment?</p>	<p>No</p>	<p>No significant risk having regard to the nature and scale of development. Any risk arising from construction will be localised and temporary in nature. The site has no history of flooding. There are no Seveso / COMAH sites in the vicinity of this location.</p>	<p>No</p>

<p>1.10 Will the project affect the social environment (population, employment)</p>	<p>The proposed development will result in an increased population at this location. This is not regarded as significant given the urban location of the site and surrounding pattern of land uses.</p>	<p>No</p>
<p>1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p>	<p>This application follows previous applications for development of the site. This application does not expand the development area or involve a significant increase in densification of the site when compared to the approved planning status of the site. The planning assessment considers the development area in its entirety.</p> <p>There are recently constructed / permitted / proposed development in the wider surrounding area. The Dublin City Development Plan 2016-2022 plans for the expansion of the city and has been subject to SEA. This application and those developments in the vicinity are catered for in the plan through land use zoning. Other developments in the wider area alongside the proposed development, are not considered to give rise to significant cumulative effects.</p>	<p>No</p>

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2. Location of proposed development

<p>2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ol style="list-style-type: none"> 1. European site (SAC/ SPA/ pSAC/ pSPA) 2. NHA/ pNHA 3. Designated Nature Reserve 4. Designated refuge for flora or fauna 5. Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan 	<p>No</p>	<p>A Protected Structure is located within the site redline boundary, however there are no works to this structure under the current application. Impacts of the proposed development upon Protected Structures and conservation areas located in the wider area are considered in the planning assessment. An AA Screening Assessment accompanied the application which concluded no significant adverse impact on any European Sites.</p>	<p>No</p>
<p>2.2 Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be affected by the project?</p>	<p>No</p>	<p>No such uses on the site and no impacts on such species are anticipated.</p>	<p>No</p>
<p>2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>	<p>Yes</p>	<p>RPS no.3583 covering Mortuary chapel, the main convent building and chapels of St. Clare's. A Conservation Compliance Report has been submitted with the application. The proposed development will not have any significant impact upon the Protected Structure or any other historic</p>	<p>No</p>

DECISION

		<p>features in the area. The area is on the outside edge of the inner-city area and characterised by a mix of development. Archaeology of the site has been appraised and conclusions described in the submitted Final Archaeology Report for the application. No significant impacts are identified and the proposed development does not alter any groundworks which have been consented under previous planning approvals for the site.</p>	
<p>2.4 Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p>	<p>No</p>	<p>No such features arise in this urban location.</p>	<p>No</p>
<p>2.5 Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</p>	<p>No</p>	<p>There are no direct connections to watercourses in the area. The Grand Canal is removed from the site and located to the north. The Poddle Stream is located 148m from the proposed works with roads, houses and gardens separating it from the site. The development will implement SUDS measures to control surface water run-off. The site has no history of flooding and mitigation measures are to be implemented to manage flood risk as set out in the Flood Risk Assessment as part of the Engineering Report submitted with the application.</p>	<p>No</p>

<p>2.6 Is the location susceptible to subsidence, landslides or erosion?</p>	<p>No</p>	<p>There is no evidence in the submitted documentation that the lands are susceptible to lands slides or erosion and the topography of the area is flat.</p>	<p>No</p>
<p>2.7 Are there any key transport routes (eg National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</p>	<p>No</p>	<p>The site is served by Harold's Cross Road a major vehicular route into the city centre which could be susceptible to congestion. The proposed development does not include any additional car parking, beyond that approved as part of previous planning approvals for development of the site. A Traffic Impact and Parking Strategy report has been submitted with the application and describes that no significant impacts are expected on vehicular routes as a result of the development. Future occupiers are anticipated to rely upon a range of public transport and other sustainable transport forms, including cycling and walking given the accessible urban character of the site.</p>	<p>No</p>
<p>2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be affected by the project?</p>	<p>Yes</p>	<p>There is a school located adjacent to the site and this has been considered as part of the planning assessment. Hospitals and other schools are also located in the wider area. Harold's Cross Park is located opposite the site. No significant impacts are anticipated.</p>	<p>No</p>

DISCONTINUED

3: Any other factors that should be considered which could lead to environmental impacts		
3.1 Cumulative Effects: Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?	No	Developments have been identified in the vicinity, however these are all of a scale and nature that would be anticipated under the Dublin City Development Plan 2016-2022 and would not give rise to significant cumulative environmental effects alongside this development.
3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?	No	No trans boundary considerations arise
3.3 Are there any other relevant considerations?	No	No

C. CONCLUSION		
No real likelihood of significant effects on the environment.	Yes	EIA Not Required
Real likelihood of significant effects on the environment.	No	

D. MAIN REASONS AND CONSIDERATIONS

Having regard to: -

- (a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- (b) the location of the site on lands with a zoning on the northern half of the subject site zoned Z12 and the southern portion of the lands zoned Z1, with the objective for Z12 lands "to ensure existing environmental amenities are protected in the predominantly residential future use of these lands", and the objective for Z1 lands "to protect, provide and improve residential amenities", with Residential being a permitted in principle use in Z12 and Z1 lands in the Dublin City Development Plan 2016-2022 and the results of the Strategic Environmental Assessment of the plan,
- (c) The existing use on the site and pattern of development in surrounding area;
- (d) The availability of mains water and wastewater services to serve the proposed development,
- (e) the location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended)
- (f) The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003), and
- (f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and

(g) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction Waste Management Plan, Construction Traffic Management Plan, Environmental Management Plan, the Engineering Services Report with appended Flood Risk Assessment, and the Operational Waste Management Plan.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required.

DECISION QUASHED

DECISION QUASHED

R. G. O'Connor

Rachel Gleave O'Connor
Planning Inspector

1st February 2021

DECISION QUASHED