



An  
Bord  
Pleanála

## Inspector's Report ABP-308936-20.

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<b>Development</b>	A build-to-rent shared living development.
<b>Location</b>	98, Merrion Road, Dublin 4
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	3019/20
<b>Applicant(s)</b>	Bartra Property Ltd (trading as Niche Living)
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with Conditions.
<b>Type of Appeal</b>	First Party v Condition 3 Multiple Third Party
<b>Appellant(s)</b>	Valerie O'Shea Margaret Reid Timothy O'Donovan Fionan & Nuala Clifford Edward & Hazel O'Flynn

**Observer(s)**

1. Joan Hanley
2. Philip O'Reilly
3. Dr. Freda Gorman Meagher
4. Michael & Jane Collins
5. Rosemary O'Mahony
6. Aisling Ryan
7. Kathleen O'Callaghan & Bernard O'Mahony
8. Pat Casey
9. Wynn timer O'Brien
10. Eamonn Doody
11. Desmond O'Malley

**Date of Site Inspection**

18/02/2021.

**Inspector**

A. Considine.

# Contents

1.0 Site Location and Description .....	5
2.0 Proposed Development .....	6
3.0 Planning Authority Decision .....	17
3.1. Decision .....	17
3.2. Planning Authority Reports .....	17
4.0 Planning History.....	22
5.0 Policy and Context.....	23
5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018.....	23
5.2. Sustainable Residential Development in Urban areas, Guidelines .....	
(DoEHLG, 2009): .....	23
5.3. Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, (DoHPLG, 2018):.....	24
5.4. Urban Development and Building Heights Guidelines for Planning Authorities December 2018.....	28
5.5. Development Plan.....	28
5.6. Other Policy & Guidance Documents.....	30
5.7. Natural Heritage Designations .....	30
5.8. EIA Screening .....	31
6.0 The Appeal .....	32
6.1. First Party Grounds of Appeal.....	32
6.2. Third Party Grounds of Appeal.....	34
6.3. First Party Response to Third Party Appeals .....	38
6.4. Third Party Responses to First Party Appeal .....	41
6.5. Third Party Response to other Third-Party Appeals.....	43

6.6.	Third Party Responses to First Party Response to Third Party Appeals .....	43
6.7.	Planning Authority Response .....	45
6.8.	Observations .....	45
7.0	Assessment .....	46
7.1.	Principle of the development .....	46
7.2.	Compliance with Dublin City Development Plan 2016-2022 and with .....	
	National Guidelines & Standards: .....	47
7.3.	First Party Appeal.....	57
7.4.	Visual & Residential Amenity Impacts.....	58
7.5.	Roads & Traffic .....	61
7.6.	Other Issues.....	62
7.7.	Water Services.....	62
7.8.	Appropriate Assessment .....	65
8.0	Recommendation.....	66
9.0	Reasons and Considerations.....	67

## 1.0 Site Location and Description

- 1.1. The subject site is located in the southern extent of Ballsbridge, to the south of Dublin City Centre. The British Embassy lies directly opposite the site and the properties immediately adjacent to the site comprise residential in the form of detached two storeys to the north, single storey dwellings to the east (and accessed off Shrewsbury Park) and apartments to the south. A number of properties in the immediate vicinity of the site also offer B&B accommodation.
- 1.2. Merrion Road is identified as a very important and busy radial route which runs from the city centre in a southerly direction. The R118 includes cycle and bus lanes. The subject site is also located in close proximity to the Sandymount DART Station, approximately 410m to the north east and the wider area of Ballsbridge, approximately 800m to the north of the site, includes a variety of amenities including shopping, leisure, bars and restaurants as well the Sandymount Strand, to the east.
- 1.3. The subject site has a stated area of 0.22ha and fronts onto Merrion Road. There is an existing two storey building with attic accommodation and which has a three-storey element to the rear, present on the site. The building is indicated as having been constructed in the 1930s and is currently used as a guest house / tourist accommodation. There are two access points to the site from Merrion Road and the building is set back from the roadside boundary with car parking provided to the front of the site.
- 1.4. The rear of the site, and the location of the newer constructions to the existing building, is located behind a wall with a gate. This rear garden area is approximately 25m in length and backs onto the rear of the houses on Shrewsbury Park. To the north of the existing building, there is a single storey building which extends along the north western boundary of the site. It appears that this building is occupied separately from the main building on the site and is enclosed by a fence. The existing buildings on the site occupies a floor area of 872m<sup>2</sup>.
- 1.5. The Board will note that planning permission has been granted, and remains valid, for the demolition of all of the buildings on the site and the construction of a part 3 to part 5 storey over basement apartment development, ABP ref 300672-18 refers.

## 2.0 Proposed Development

2.1. Permission is sought, as per the public notices for a Build-to-Rent Shared Living Residential Development at a 0.22 Ha site. The development will principally consist of:

- the demolition of all structures on site (872sqm) which are currently in guesthouse use, and
- the construction of a part 3 to part 5 no. storey over part lower ground/ part basement Shared Living Residential Development comprising 111 no. bed spaces (96 no. single occupancy rooms, 3 no. accessible rooms and 6 no. double occupancy rooms) with lift overrun at roof level (3,617sqm).
- The development also consists of the provision of communal living/ kitchen/ dining rooms at each floor level from lower ground to fourth floor level to serve the residents of each floor;
- communal resident amenity spaces for all residents including gymnasium, TV/cinema room and function room at basement/ lower ground floor level and a reception/ lounge at ground floor level,
- a roof terrace at third floor level (78sqm) facing north-west, north-east and south-east and at fourth floor level (111.5 sqm) facing all directions,
- resident facilities including launderette, linen store, accessible WC/ shower and bin storage;
- bicycle parking;
- hard and soft landscaping;
- solar panels;
- plant,
- and all other associated site works above and below ground.

all at a 0.22 Ha site at 98, Merrion Road, Dublin 4.

2.2. The application included a number of supporting documents as follows;

- Plans, particulars and completed planning application form

- Planning Report -

The report, prepared by Thornton O'Connor Town Planning, sets out the detail of the planning application and the applicant, as well as the details of the multi-disciplinary team involved in the preparation of the application. The report details the site location, context and notes the proximity of public transportation facilities including DART stations and bus stops, as well as other employment, shopping, recreational and other facilities in the area. Section 3 of the report provides a rationale for the proposed shared living development and highlights recent permissions granted to the applicant for similar schemes. Section 4 of the report deals with the planning history of the site while Section 5 presents a summary of pre-planning consultations. Section 6 of the Planning Report describes the proposed development in detail, including the living spaces and communal facilities proposed and Section 7 relates to policy.

The report concludes that the proposed development represents a significant investment in a strategically located underutilised brownfield site in a core urban location in Dublin. The site will positively contribute to the area and is well located in terms of employment locations, retail and leisure facilities as well as public transport facilities. The proposed development will be appropriately managed, is supported by national policy and represents an appropriate and attractive design solution at the subject site. The proposed building is generally within the parameters of the extant permission at the site (ABP ref. PL29S.300672) and will add interest to the streetscape.

- Shared Living Report -

The report, prepared by Thornton O'Connor Town Planning, seeks to provide clarity in relation to the functionality of the different spaces within the Shared Living development and compliance of the Shared Living development with the Sustainable Urban Housing Design Standards for New Apartments, 2018. The report provides an overview of the proposed units and Section 3 of the report sets out the compliance with apartment guidelines.

- Accommodation Schedule

- Engineering Services Report -

This report, prepared by Cronin & Sutton Consulting Engineers (CS

Consulting Group), assesses the proposed development under a number of headings relating to foul drainage, stormwater drainage, potable water infrastructure and flood risk assessment.

- Foul Drainage:

- \* There is an existing combined culvert to the site flowing from the south east to the north west along Merrion Road.
- \* The proposed development will generate waste in the order of 11.1m<sup>3</sup>/day, equating to 0.128l/s Dry Weather Flow and 0.771l/s Peak Flow.
- \* The proposed drainage system will be separated into foul and storm systems with the outfall arrangement to incorporate a 'spur' connect for future separation of the public drainage network.
- \* The upper floors will drain by gravity and the lower level will drain into a pumping chamber and discharge to an outfall manhole at ground level and outfall by gravity into the public system.
- \* It is proposed to connect into the existing 1060 x 770mm combined sewer located on Merrion Road.

- Stormwater Drainage:

- \* A survey of the site revealed a 100mm diameter clay combined sewer directed from the site to Merrion Road.
- \* The LA hydraulic performance maps do not indicate that the storm sewers on site are currently under hydraulic pressure.
- \* The proposed development will incorporate the principles of Sustainable Urban Drainage Systems, SuDs to reduce any post development run-off to pre-development discharge rates and to improve the quality of the storm water before it enters the public system.
- \* The development will attenuate storm water in an underground tank and will restrict flow to the public drainage network to 2l/s by the use of a flow control device. The system will also use an oil separator to remove harmful matter before entering the public network.



- Potable Water Supply:
  - \* There is an existing 225mm HDPE water main on Merrion Road and the subject site has a connection to the public system.
  - \* A new metered connection is proposed with 24-hour storage to be provided.
  - \* The predicted volume of water usage is based at a rate of 100l/bedroom/day which generates a demand of 11.1m<sup>3</sup>/day.
  - \* A Pre-Connection Enquiry has been submitted to IW and a confirmation of feasibility has been received.
  
- Flood Risk Assessment:
  - \* The proposed development site is located within Flood Zone C which indicates a low probability of flooding.
  - \* The site is located approximately 1.5km from Dublin Bay and approximately 600m from the River Dodder. The risk of Fluvial Flooding is not deemed to be a critical issue.
  - \* The site is not affected by tidal water bodies and as such, tidal flooding is negligible.
  - \* The site is not located in a zone predicted to be at unacceptable risk from pluvial flood events.
  - \* It is also noted that currently, the site does not have any on-site attenuation, therefore the proposed development will reduce the run-off from the site to greenfield levels and aid in freeing up capacity in the combined sewer.
  - \* The proposed attenuation tank will be sized for a 1-in-100 year storm event and will release storm water in a controlled manner.
  - \* There is no issue with the local drainage arrangements at present.
  - \* The vulnerability of groundwater in the area of the site is low.
  
- Construction Waste Management Plan -
 

This report, prepared by Cronin & Sutton Consulting Engineers (CS Consulting Group), seeks to ensure that waste generated during the demolition, construction and operational phases of the development will be managed and disposed of in a way that ensures the provisions of the Waste

Management Acts 1996 to 2013 and the Eastern-Midlands Region (EMR) Waste Management Plan 2015-2021 are complied with.

Section 4 of the report sets out the responsibilities for waste management during the construction and operational phases and Section 5 presents the details of the demolition and construction waste generated by the proposed development, including estimated volumes. Mitigation measures are also noted. Predicted impacts of the demolition and construction phase are considered to be small scale and of short duration with respect to waste management.

Section 6 of the report deals with operational waste generated by the proposed development and provides details of mitigation measures to minimise the disposal of waste materials to landfill. It is predicted that the environmental impact of the developments operational phase will be long-term and slight with respect to waste management.

- Outline Construction Management Plan -

This report, prepared by Cronin & Sutton Consulting Engineers (CS Consulting Group), sets out how the proposed works will be managed for the duration of the construction phase. It is noted that the Plan will be updated by the appointed Contractor in advance of the construction phase.

The Plan will deal with all aspects of the proposed works including the timeline, hoarding and site set-up, demolition and site clearance, excavations and foundations, substructure, superstructure, movement through the site, site accommodation and working hours. In addition, the CMP will deal with environmental issues relating to noise, air quality and dust, harmful materials, vibration, waste management and traffic management.

- Traffic & Transportation Report -

This report, prepared by Cronin & Sutton Consulting Engineers (CS Consulting Group), considers the impact of the proposed development in terms of traffic and transport. A Mobility Management Plan will be developed by the Mobility Manager and sections 5-12 of the Traffic & Transportation Report are intended to serve as a template for the implementation of a MMP once the development is complete and operational. The report also provides details of sustainable modes of transport which exist in the immediate vicinity

of the site. The report details the site location and context noting that the site is within walking distance of Ballsbridge and other employment zones.

In terms of parking, it is not proposed to include any car parking in the development due to the nature of the development itself, the characteristics and location of the site, its proximity to high-intensity employment zones and the convenient availability of high-quality public transport services in the immediate vicinity.

With regard to bicycles, the development proposes parking in accordance with the Dublin City Development Plan 2016-2022 which specifies a minimum provision of bicycle parking spaces based on the number of units proposed. The development proposes a secure bicycle storage area at surface level accommodating 114 no. long-term bicycle parking spaces and 22 no. visitor spaces.

In terms of servicing, provision is made for access to the development's internal street by emergency vehicles and servicing vehicles only. Swept path analysis with regard to fire tenders, refuse collection vehicles and service vehicles has been carried out.

- Site Planning for Daylight & Sunlight -

This report, prepared by JV Tierney & Co (JVT Sustainable Design Engineers), undertook a daylight and sunlight study in respect of the proposed development. The report concludes that the development will have little impact on the surrounding residential properties and that the development performs exceptionally well in relation to Average Daylight Factors with a 100% pass rate achieved. It is also noted that the proposed development has no material difference from the grant of permission already issued for the site.

- Sustainability & Energy Report -

This report, prepared by JV Tierney & Co (JVT Sustainable Design Engineers), prepared a sustainable and energy strategy for the development to use efficient passive and active measures coupled with the appropriate renewable technology to deliver a robust, cost effective, efficient and healthy environment within the development site. The energy strategy approach is to achieve an 'A' Rating BER.

- Risk Assessment – Covid 19 -

A Risk Assessment was performed by Corporate Health Ireland in relation to the potential transmission of Covid in the proposed co-living building. The report considers the risk of transmission between persons in the co-living development to be low, and likely to be less than for people living in a normal house or shared apartment. The self-contained nature of the private suites dramatically reduces the risk of transmission of the virus and makes suites ideal for self-isolation or quarantine if required.

Common areas such as the gym and cinema will need strict adherence to social distancing but are considered no higher risk than similar facilities that may be used outside the building. The shared kitchens are not considered to increase the risk of transmission given the controls that are in place, including the cleaning regime.

- Operational Waste Management Plan -

This report, prepared by AWN Consulting Ltd., seeks to ensure that the management of waste during the operational phase of the development is undertaken in accordance with current legal and industry standards. In particular, the OWMP aims to provide a robust strategy for storing, handling, collection and transport of waste generated at the site, and ensuring maximum recycling, reuse and recovery of waste with diversion from landfill wherever possible.

Section 4 of the report provides an estimate of waste arising, with the main types and volumes presented in Table 4.1, pg. 11 of the report. The report sets out the bin types and sizes to be used to service the development, including bins to be located in common areas of the building. Waste collection will be by a contractor holding a valid waste collection permit and all waste must be transported to registered, permitted and / or licenced facilities only. The report concludes that the waste strategy presented address all legal requirements, waste policies and best practice guidelines and demonstrates that the required storage areas have been incorporated into the overall design of the development.

- Appropriate Assessment Screening Report -

Moore Group – Environmental Services prepared the AA Screening Report for

the proposed development. The report sets out the legal context for AA and identifies 19 European Sites considered to be located within the potential zone of impact of the project. The report concludes that there is no hydrological or meaning biological connectivity to the majority of the European sites, other than Dublin Bay via the municipal sewer, which will be intercepted by appropriate treatment. No significant emissions are predicted during the operational phase and the development will connect to public services. No significant effects or cumulative or in-combination effects are predicted, and the report concludes with a finding of no-significant effects. It is not considered necessary to undertake any further stage of the Appropriate Assessment process.

- Ventilation & Stay Safe Shield -

Niche Living, the applicant, prepared a report on ventilation proposed for the development in relation to indoor environment quality and notes that the development has been designed to LEED (Leadership in Energy and Environmental Design) standards. LEED is an internationally recognised green building certification systems and provides third party verification that a building or community was designed and built using strategies aimed at improving performance across all the metrics that matter most.

The infographics submitted provide details as to how the proposed development complies.

- Operation Plan -

Niche Living, the applicant, submitted a report on the shared living concept including the facilities provided within the scheme.

- Stay Safe Shield & Covid 19 Pandemic Operation -

Niche Living, the applicant, submitted a report on their standard of cleanliness and disinfection to ensure residents enjoy peace of mind in terms of cleanliness during their stay. The Niche Living *Stay Safe Shield* protection is a rigorous system that incorporates a know-how and scientific approach to cleaning practices and product offerings.

- Design Led Approach to modern city living -

Niche Living, the applicant, submitted a report on the shared living concept.

- Photomontages -

A series of photomontages depicting the proposed development was prepared by Model Works.

- Design Statement –

This report was prepared by deBlacam & Meagher Architects and sets out the context of the subject site and its surroundings including a series of photographs. In terms of the proposed building, the Design Statement submits that the proposed building aims to complement the context of the site by setting the development in a landscaped garden similar to the existing buildings to the south. The scale of the building is 5 storeys and is no higher than the existing trees on Merrion Road or the trees to the rear of the site. The scale is also similar to other buildings in the vicinity and is mitigated by its setback from neighbouring properties within the landscaped garden.

The report includes details of the proposed internal layout of each unit as well as the communal spaces and sets out details of intended materials to be used in the construction.

- Landscape & Visual Impact Assessment -

Stephen Diamond Associates, Chartered Landscape Architects, provided an assessment of the visual impacts for the proposed development. The purpose of the study was to appraise the existing landscape of the site and its environs and to assess the likely impacts arising from the proposed development.

The report considered the scale or magnitude of the development in terms of landscape and visual impact from 4 viewpoints in the vicinity.

The report concludes that the development, on 3 viewpoints, V1 – V3 will have a significant or moderate visual impact and a high or medium magnitude of impact. 1 viewpoint, V4, is identified as having a slight / moderate visual impact significance and a low scale / magnitude of impact.

Mitigation measures include the retention of existing mature vegetation and the development of an effective soft landscaping scheme which will assist in setting the development into its landscape context.

- Landscape Design Rationale -

Stephen Diamond Associates, Chartered Landscape Architects, provided a landscape design rationale and comprehensive and detailed landscaping

proposal for the subject site. The report sets out the proposals for all landscape elements of the site including the entrance courtyard, terraced communal garden, roof terraces and hard landscape areas.

2.2.1. Following the submission of the response to the further information request, the applicant submitted the following documents:

- Planning Report -

Amended plans and elevational drawings depicting the proposed amended windows to the building, the introduction of balconies on the front elevation, the removal of the roof canopy and addition of vegetation. Details of finishes and the proposed fritted glass is also provided.

It is submitted that the proposed development provides more communal kitchen / dining floorspace than previously permitted shared living schemes. The results of the daylight and sunlight analysis have been updated to reflect the design changes. The report concludes that there is no material difference between the proposed development and the permitted development on the site.

In relation to the tree to be removed to accommodate the entrance, it is submitted that this tree was identified for removal as part of the previously permitted development.

Access issues and layout of bicycle parking are detailed.

- Response to Planners Report and Request for Further Information Covid 19 Report -

This report addresses the concerns raised in relation to bedroom size and concludes that the size of the bedroom is not a factor in terms of Covid 19. It further submits, in the relation to the proposed cleaning regime and kitchens, that the proposals exceed anything the writer has witnessed in a residential setting. Subdividing the units into smaller units would be counter-productive as it would limit opportunities for social distancing that is available in larger spaces.

- Site Planning for Daylight & Sunlight -

This report, prepared by JV Tierney & Co (JVT Sustainable Design Engineers), updates the daylight and sunlight study in respect of the proposed

development which takes account of the amendments proposed. The report concludes that the difference in overshadowing between the proposed and the permitted schemes is negligible with some slight improvement in areas in the proposed scheme.

- Updated roads and traffic drawings indicating access arrangements and swept path analysis.
- Updated Landscape & Visual Impact Assessment.
- Photomontages

2.2.2. The residential development is proposed as a ‘Shared Accommodation Development, in accordance with Section 5.13 of the Apartment Guidelines 2018 which comprise ‘... professionally managed rental accommodation, where individual rooms are rented within an overall development that includes access to shared or communal facilities and amenities.’ The proposal presents an alternative model for shared accommodation which comprises multiple residential units, with kitchenettes and sitting areas within each unit and communal facilities to cater for a larger number of units. It is submitted that this model provides for an integrated approach to shared living with high quality private bedrooms and a range of shared amenity spaces, accessible to shared living residents.

2.2.3. While the applicant advises that it is their intention to develop and manage the proposed Shared Accommodation Scheme in accordance with their Niche living concept, the planning documents submitted did not include a formal draft legal covenant which confirms that, prior to occupation, the applicant will enter into a covenant / legal agreement that outlines that the proposed Build-To-Rent Shared Accommodation scheme will remain in the ownership of an appointed Build-To-Rent company, who will manage the operation of the scheme, for a minimum period of not less than 15 years as required by the guidelines.

2.2.4. In response to third party appeals, the applicant has submitted that this draft legal covenant was submitted to Dublin City Council as part of the planning documentation, but DCC have not submitted a copy to the Board. The Covenant is not available on the DCC website or any other public forum. I also note that there is no reference to the covenant in the documents submitted by the applicant.



## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 23 conditions including Condition 3 which states as follows:

3. Prior to the commencement of development the applicant shall submit revised plans for the written consent of the Planning Authority, which omit the following bedrooms from each of the floors and instead designate and utilise these spaces as communal living spaces:
  - (i) Ground floor standard rooms 19 and 20.
  - (ii) First floor standard rooms 19 and 20.
  - (iv) Second floor double rooms 21, 22 and 23.
  - (v) Third floor double rooms 15, 16 and 17.
  - (vi) Fourth floor standard rooms 13 and 14.

**Reason:** In the interest of the residential amenity of the units

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history and the County Development Plan policies and objectives. The report also includes a section on Environmental Impact Assessment and Appropriate Assessment Screening.

The initial Planning Report notes no objection in principle to the proposed development but raises concerns in terms of the visual implications of the development on the streetscape and neighbouring properties. In addition, the issue of 'shared living' under the current Covid 19 pandemic also needs to be addressed in the liveability of these types of residential accommodation. Issues raised by the Transportation are also noted. The planning report recommends that further information is sought.

Following the submission of the response to the further information request, the Planning Officers final report deemed the proposed development acceptable subject to amendments as detailed in Condition 3 of the DCCs grant of planning permission, including the designation of 12 proposed units as communal living spaces, reducing the number of bedspaces from 111 to 93. The planning officer recommends that permission be granted for the proposed development, and this Planning Report formed the basis of the Planning Authoritys decision to grant planning permission.

### 3.2.2. Other Technical Reports

**Drainage Division:** No objection subject to compliance with conditions.  
No change to the recommendation is noted following the submission of the response to the FI request.

**Transportation Planning Division:** The report required the submission of further information in relation to the following:

1. The development has not sufficiently demonstrated specific measures to facilitate the elimination of car parking at this location. A review of the proposed vehicular access arrangements and site plan to facilitate drop-off and car share provision.
2. The applicant is requested to clarify vehicular access proposals for the development including any provision of a gate, barrier etc at the entrance. Other details required to be considered.
3. Clarification is sought in relation to the resident cycle parking in relation to security and accessibility. Concerns also raised in relation to the location of the proposed visitor cycle parking area.

Following the submission of the response to the FI request, the Transportation Planning Division concludes recommending conditions to be included in a grant of permission.

**Parks, Biodiversity & Landscape Services:** Report submitted following the submission of the response to the FI request. The report notes that a well-developed landscape masterplan has been included with the submission which includes the retention of existing

trees to the northern perimeter of the site. The report notes that the development requires the removal of a public street tree which is not considered satisfactory. As the Bus Connects proposals are not approved, the suggested associated impact on the street trees should not form part of the application. The report also notes that the site is too small to provide suitable public open space and a financial contribution in lieu should be conditioned.

The report concludes citing reservations in relation to the protection of the public street trees. Conditions are recommended.

### 3.2.3. Prescribed Bodies

**An Taisce:** Submits that the development should be refused on the grounds that serious questions arise in relation to shared accommodation or co-living as a sustainable, viable use for the shorter or longer term, particularly in the context of the current pandemic. In addition, it is submitted that the demolition of Cedar Lodge is not justified and is contrary to Section 16.10.17 of the Dublin City Development Plan 2016-2022.

### 3.2.4. Third Party Submissions

There are 39 no. third party objection/submissions noted on the planning authority file, which includes objections from local residents, a local councillor, a senator, a TD and an MEP. The issues raised are summarised as follows:

- Objects to the nature of the proposed development and considers it an inappropriate form of residential development in the terms of Covid and on public health grounds.
- No medical person can guarantee that Covid-19 can be managed successfully in a property such as is proposed.
- The Risk Assessment Covid-19 report does not adequately address concerns associated with Covid and proposals that residents will be required to book a

1-hour slot to access the kitchens is not conducive to sustainable, medium to long-term accommodation.

- A short stay facility is not justification for a poor quality of accommodation and the proposed layout would not be conducive to 'working from home' as is currently encouraged.
- The permitted development of apartments would have provided more spacious and better amenities for residents. Concern is raised that the proposed development will have a deleterious effect on the quality of life for residents in the locality.
- It is considered hasty to grant permission for the development in advance of the publication of the review of co-living schemes report due for completion and debate in the Joint Oireachtas Committee on Housing.
- The architectural merit of the existing building on the site does not admit, accept or permit in terms of proper planning development, its demolition. It is a once off development not replicated anywhere else in Dublin and could be tastefully retained and extended.
- Objects to the principle of the development type proposed as it is not in keeping with the surrounding locality and streetscape. Impacts on existing properties in terms of building foundations etc are also raised as a concern.
- Visual impact associated with the scale, height and character of the proposed development objectional.
- The development will negatively impact existing adjacent properties by reason of overlooking and overshadowing.
- Given the proximity of a number of Embassies in the area, the development could present a security risk.
- Co-living development should not be permitted as it does not provide an ethical housing policy. The operational arrangements proposed are similar to the worst examples of Direct Provision Centres.
- Impact of the development on existing services, including water, broadband and access to public transport. The flood risk assessment is inadequate.

- The development does not conform with the requirements of the City Development Plan in terms of infill development, zoning and the requirements for quality housing. The impacts on the trees are not clearly described.
- The proposed development would be a contravention of the City Development Plan and represents an intensification of use as well as an inappropriate density. Using the density of people per sq. km, the proposed development represents a density of 50,500 persons.
- Roads and traffic issues raised including lack of parking or space for servicing of the development due to 5m set back from Merrion Road.
- The applicant has not submitted documentation demonstrating a convincing supporting rationale for a Shared Accommodation development as required in the Guidelines.
- Issues raised in relation to a disconnect between the Niche Living Report and the Risk Assessment Report. The small floor area of the bedrooms is justified by the co-location of dedicated communal eating and recreation spaces. The exclusion of these spaces in the event of Covid isolation requirements, would result in residential units significantly below the 37m<sup>2</sup> minimum floor area required for studio apartments.
- Condition 12 of the extant permission for apartments includes a social housing provision. Dublin City Council advised their preference to purchase social housing units on the site. The current proposal removes this social housing provision.
- No car parking is proposed on the site notwithstanding the fact that 28 basement spaces were proposed in the extant permission. Given the location of the site outside of the city centre, the lack of car parking may be a significant negative social consequence in the suburban location.
- Issues raised with the design and layout of both the units and the ground floor external spaces and considers that the amenities proposed are inadequate to accommodate the proposed population of the development.
- The beds all appear to fold into the wall including those located in accessible rooms raising questions as to their usability for people with disabilities.

- The development will only further social isolation and disconnect. The proposal to use more technology raises concerns.
- Issues raised with the previous grant of permission on the site. Residential amenity issues cannot be overlooked where the housing product is financialised and no contribution to social housing or affordable housing is provided.
- The proposed development does not meet the standards and materially contravenes the SPPR of the Residential Guidelines as there is no demonstrated need for such type of development, the proposal accommodates 20 standard bedrooms to each pod or accommodation unit and bedroom sizes are substandard. In addition, no evidence of the required covenant or legal agreement has been submitted.

Following the submission of the response to the FI request, no further third-party submissions were received by the Planning Authority.

## 4.0 Planning History

The following is the recent planning history pertaining to the subject site:

**ABP ref ABP-300672-18 (PA ref 3671/17):** Permission granted following a multiple third-party appeal for development on a site of approximately 0.22ha, located at No. 98 Merrion Road, Dublin 4. The development will consist of the demolition of all of the existing structures on the site (872m<sup>2</sup>) currently in guesthouse use, and the construction of an infill apartment scheme of 5 storeys over basement in height (4,035m<sup>2</sup>). The third and fourth floors of the building will be set-back onto Merrion Road. The development will comprise 20 no. apartment units including 3 no. 1-bedroom units, 14 no. 2-bedroom units and 3 no. 3-bedroom units with private balconies/terraces at each floor level. The basement level will accommodate 31 no. car parking spaces (including 2 no. universal access spaces and 9 no. visitor spaces), 2 no. motorcycle spaces, ancillary apartment stores, bin stores and service stores, via a ramped access within the site. The development also includes 879m<sup>2</sup> of communal open space. Revised vehicular and pedestrian access arrangements to the site are proposed from Merrion Road. The development will also include piped infrastructure and ducting; 6 no. solar panels at roof level; roof plant; 20 no. bicycle

spaces; changes in level; site landscaping and all associated site development and excavation works above and below ground.

**PA ref 4168/18:** Application withdrawn prior to decision. Permission sought for the demolition of existing structures on site and the construction of an infill apartment development.

There are a number of historical planning applications associated with the operation of the guest house on the site from between 1991 and 2001. None are considered relevant to the current appeal.

## 5.0 Policy and Context

### 5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

- 5.1.1. The National Planning Framework – Project Ireland 2040 is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. Objective 3b seeks to deliver at least 50% of new houses in the city/suburbs of Dublin, Cork, Galway, Limerick and Waterford. Objective 11 favours development which can encourage more people to live or work in existing settlements while Objective 27 seeks to prioritise walking and cycling accessibility to existing and proposed development.

### 5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

- 5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments:
- quality homes and neighbourhoods,
  - places where people actually want to live, to work and to raise families, and
  - places that work – and will continue to work - and not just for us, but for our children and for our children’s children.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

**5.3. Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, (DoHPLG, 2018):**

5.3.1. These statutory guidelines update and revise the 2015 Sustainable Urban Housing: Design Standards for New Apartments Guidelines. The objective is to build on the content of the 2015 apartment guidance and to update previous guidance in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply, the Government's action programme on housing and homelessness Rebuilding Ireland and Project Ireland 2040 and the National Planning Framework, published since the 2015 guidelines. Aspects of previous apartment guidance have been amended and new areas addressed in order to:

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

5.3.2. Notwithstanding the adoption and coming in to effect of the new Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government, as amended on 23rd December, 2020, having regard to the provisions of the new Guidelines and date, I am satisfied that the applicable Guidelines in this instance are the Guidelines issued March 2018'. This appeal will therefore be assessed on its merits and having regard to the



legislative provisions and guidance relating to this residential typology applicable therein.

- 5.3.3. Chapter 5 of the Apartment Guidelines deals with Build to Rent (BTR) and Shared Accommodation (SA) schemes. BTR schemes are defined as follows:

Purpose-built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord.

- 5.3.4. Specific Planning Policy Requirement (SPPR) 7 sets out the following requirements for BTR developments:

- (a) Described in the public notices associated with a planning application specifically as a 'Build-To-Rent' housing development that unambiguously categorises the project (or part of thereof) as a long-term rental housing scheme, to be accompanied by a proposed covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains as such. Such conditions include a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period;
- (b) Accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development.

These facilities to be categorised as:

- (i) Resident Support Facilities - comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.
- (ii) Resident Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

5.3.5. Shared accommodation is to be considered as a subset of BTR accommodation. SPPR 9 provides as follows:

Shared Accommodation may be provided and shall be subject to the requirements of SPPRs 7 (as per BTR). In addition,

- (i) No restrictions on dwelling mix shall apply;
- (ii) The overall unit, floor area and bedroom floorspace requirements of Appendix 1 of these Guidelines shall not apply and are replaced by Tables 5a and 5b;
- (iii) Flexibility shall be applied in relation to the provision of all storage and amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities. The obligation will be on the project proposer to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity;
- (iv) A default policy of minimal car parking provision shall apply on the basis of shared accommodation development being more suitable for central locations and/or proximity to public transport services. The requirement for shared accommodation to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures.

5.3.6. Section 5.13 describes shared accommodation as follows:

... professionally managed rental accommodation, where individual rooms are rented within an overall development that includes access to shared or communal facilities and amenities.

5.3.7. Section 5.15 states:

One format of Shared Accommodation which is proposed by these guidelines is a residential unit comprising of 2-6 bedrooms, of single and/or double occupancy with a common shared area within the residential unit for living and kitchen facilities.

5.3.8. Section 5.16 provides minimum standards for bedroom sizes and common living and kitchen facilities floor areas and includes Table 5a and Table 5b as follows:

<b>Table 5a: Shared Accommodation -</b>	<b>Minimum bedroom size</b>
Single*	12m <sup>2</sup>
Double / twin*	18m <sup>2</sup>

\*Includes ensuite

<b>Table 5b: Shared Accommodation –</b>	<b>Minimum common living &amp; kitchen facilities floor area</b>
Bedrooms 1 - 3	8m <sup>2</sup> per person
Bedrooms 4 - 6	Additional 4m <sup>2</sup> per person

5.3.9. Section 5.17 states:

A key feature of successful Shared Accommodation schemes internationally is the provision of wider recreation and leisure amenities as part of the overall development. Residents enjoy access to sports and recreation facilities that are dedicated for use by the residents only and have the opportunity to experience a shared community environment among residents of the scheme.

5.3.10. Sections 5.18 and 5.19 provide guidance on suitable locations for shared accommodation schemes. The prevailing context of the proposed site is to be considered, with city centres being the appropriate location for such developments. Section 5.18 states:

In this regard the obligation will be on the proposer of a shared accommodation scheme to demonstrate to the planning authority that their proposal is based on accommodation need and to provide a satisfactory evidential base accordingly. Where there is a failure to satisfactorily provide such a basis permission should be refused by the planning authority.

5.3.11. Section 5.22 states:

Shared accommodation formats may be proposed other than the format outlined in paragraph 5.15 above. For example, such proposals may be related to the accommodation needs of significant concentrations of employment in city centres and core urban locations such as major national level health campuses or similar facilities. Innovative formats may also be proposed to provide shared accommodation within protected structures in order to ensure their long-term rehabilitation and to address sensitive architectural constraints of the subject building.

5.3.12. Section 5.23 states:

The granting of planning permission for other shared accommodation formats from those outlined in paragraph 5.15 above will be at the discretion of the planning authority. In assessing such proposals, planning authorities should ensure that sufficient communal amenities are provided in accordance with the specified standards in Table 5b above and that the scale of the development is appropriate to the location/buildings involved and to the specific role that the development of the shared accommodation sector should play in the wider urban apartment market.

**5.4. Urban Development and Building Heights Guidelines for Planning Authorities December 2018.**

5.4.1. The guidelines encourage a more proactive and flexible approach in securing compact urban growth through a combination of both facilitating increased densities and heights, while also mindful of the quality of development and balancing the amenity and environmental considerations. Building height is identified as an important mechanism to delivering such compact urban growth and Specific Planning Policy Requirements (SPPRs) of the building height guidelines take precedence over any conflicting policies and objectives of the Dublin City Development Plan.

**5.5. Development Plan**

5.5.1. The Dublin City Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. The site is zoned R2, Zone Z1: Sustainable Residential Neighbourhoods in the Dublin City Development Plan 2016-2022 which seeks “To protect, provide and improve residential amenity”. To the northern corner of the subject site, the adjacent lands are zoned Zone Z2: Residential Neighbourhoods (Conservation Areas) where it is the objective “To protect and/or improve the amenities of residential conservation areas.”

5.5.2. In terms of Quality Housing and Sustainable Neighbourhoods, Section 2.3.3 of the Dublin City Development Plan 2016-2022 states that it is an objective of the council

to create a quality compact city of mixed – tenure neighbourhoods, catering for a wide range of family types. The Development Plan also states that:

‘Requiring apartment schemes to have good local facilities, and that large schemes are phased to ensure support infrastructure is provided in tandem with residential development, will assist in achieving this key strategy. An emphasis on effective property management for both apartment and housing complexes will also improve the quality of residential development’.

- 5.5.3. Section 5.5.2 of the Dublin City Development Plan 2016-2022 encourages sustainable residential areas. The plan states that “building at higher densities makes more efficient use of land and energy resources, creating a consolidated urban form which fosters the development of compact neighbourhoods and a critical mass which contributes to the viability of economic, social, and transport infrastructure”.

It is the stated policy of Dublin City Council,

**QH5:** To promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.

**QH7:** ‘To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.’

**QH8:** To promote the sustainable development of vacant or under-utilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and the character of the area.

- 5.5.4. In terms of Building Height, Section 16.7.2 of the Development Plan sets out 3 no. height category limits for the city, Low-rise, Mid-rise and High-rise. The subject site is located within 410m of the Sandymount DART Station, a Rail hub, which is an area listed within the low – rise (up to 24m commercial and residential) height category.

- 5.5.5. In terms of Transportation and car parking, the site is located within Zone 2 which requires a maximum of 1 car parking space per dwelling. The Plan requires 1 cycle space per residential unit.

5.5.6. In terms of Development Standards, the following sections of the Plan area relevant:

- Section 16.3.3 – Public Open Space –There is a 10% requirement for all new residential schemes.
- Section 16.4 – Density – The Plan notes that sustainable densities promoting the highest quality of urban design and open space will be sought by the City Council. The density of a proposal should respect the existing character, context and urban form of an area and seek to protect existing and future residential amenity. All proposals for higher densities must demonstrate how the proposal contributes to place-making and the identity of an area, as well as the provision of community facilities and/or social infrastructure to facilitate the creation of sustainable neighbourhoods.
- Section 16.5 - Plot ratio for Z1 outer city zoned lands is 0.5-2.0
- Section 16.6 - Site Coverage 45%-60%

#### 5.6. Other Policy & Guidance Documents

- Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.
- DEHLG and OPW Guidance 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities' (2009).

#### 5.7. Natural Heritage Designations

5.7.1. The site is an urban brownfield site and is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay SAC (& pNHA)(site code 00210) and the South Dublin Bay and River Tolka Estuary SPA (site code 004024) which are located approx. 1km to the east of the site.

5.7.2. The Grand Canal pNHA (Site Code 002104) lies approximately 1.7km to the north and the North Dublin Bay pNHA (Site Code 000206) lies approximately 3km to the north east.

## 5.8. EIA Screening

- 5.8.1. The application was submitted to the Board after the 1<sup>st</sup> September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.
- 5.8.2. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units
  - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.
- (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 5.8.3. The proposed development involves 111 bed spaces, including 96 no. single occupancy, 3 no. accessible and 6 no. double occupancy build-to-rent shared accommodation units on a site of 0.22ha. The site is located in an urban area that would not come within the above definition of a “business district” and is below the threshold of 2 ha for such a location. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.
- 5.8.4. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.
- 5.8.5. Having regard to nature and scale of the development, together with the urban / built nature of the site and the planning history associated with the site, there is no real

likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

This is a multiple appeal which includes a first party appeal against the inclusion of Condition 3 in Dublin City Councils decision to grant planning permission, in addition to 5 no. third party appeals against the Councils decision to grant planning permission for the proposed development.

### 6.1. First Party Grounds of Appeal

6.1.1. The first party submitted an appeal against the decision of Dublin City Council to include Condition 3 in their decision to grant planning permission. Condition 3 states as follows:

3. Prior to the commencement of development, the applicant shall submit revised plans for the written consent of the Planning Authority, which omit the following bedrooms from each of the floors and instead designate and utilise these spaces as communal living spaces:

- (i) Ground floor standard rooms 19 and 20.
- (ii) First floor standard rooms 19 and 20.
- (iv) Second floor double rooms 21, 22 and 23.
- (v) Third floor double rooms 15, 16 and 17.
- (vi) Fourth floor standard rooms 13 and 14.

**Reason:** In the interest of the residential amenity of the units

6.1.2. The appeal submission includes an introduction to, and sets out the background to, the proposed development. It also seeks to provide a context to the development in terms of location proximate to employment areas and other amenities and facilities. The grounds of appeal are summarised as follows:

- The condition is unnecessary and will negatively impact the viability of the proposed development in this core urban location.



- The condition will result in the loss of 16.2% of the proposed bedspaces where national policy seeks the densification of accessible, brownfield, infill sites within existing built-up areas.
- The reduction in the bedspaces will not achieve the sustainable development of this core urban site.
- The quantum of communal living/kitchen/dining space provided is acceptable when the particular circumstances of the site are considered.
- It is submitted that the site is located in proximity to a range of employment locations, services and facilities and it is noted that many international employers such as Facebook provide meals in the workplace and thus there will be less demand for communal kitchen space.
- The cluster arrangement is just 1 no. potential shared living format outlined in the Apartment Guidelines. The proposed scheme does not follow the cluster format. As such, it is considered that the Niche Living model – the applicants brand – provides a higher quality private space than provided in the cluster format facilitate additional in-room cooking and dining if required.
- The applicants Shared Living Model, which was arrived at after substantial research, is superior to the cluster format, and has been accepted in recent grants of permission.
- The quantum of communal living/kitchen/dining floorspace is greater than previously granted at Eblana Avenue, rising from 2.8m<sup>2</sup> per person in the Eblana Avenue Scheme to 3.63m<sup>2</sup> in the current scheme.
- There is a large quantum of cooking stations available on each floor to serve the future residents.
- The quantum of wider amenity spaces including gym, cinema room, lounge, terraces etc is significantly in excess of the quantum granted in other shared living schemes with a provision of 14.48m<sup>2</sup> per person.

It is requested that condition 3 be omitted from the decision to grant planning permission.

## 6.2. Third Party Grounds of Appeal

There were 5 third-party appeals against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect those submitted during the PAs assessment of the proposed development and are summarised as follows:

### 6.2.1. Valerie O'Shea

- Disappointed that the decision to grant permission ignores the recently announced Ministerial intention to amend the Apartment Guidelines to seek to restrict all future commercial co-living development.
- The proposed development was not assessed in accordance with the provisions of Dublin City Development Plan and a number of provisions have been contravened by the proposed development.
- The Apartment Guidelines do not apply as the proposed development site is in the wrong location, is located in the inner suburbs and not in the core city centre and is therefore, not suitable for the proposed development.
- Issues raised in relation to Covid-19 and the risk assessment submitted.
- The development will result in a substandard accommodation development.
- The option of retaining and retrofitting the existing building on the site was not given due consideration as required in the City Development Plan. It is not acceptable that the property should be demolished.
- The overriding motive for the inappropriate development is for commercial gain rather than for social or environmental benefits.
- Objects to the misrepresentation of the location and description of the site in terms of infill, brownfield and underutilised. It is none of these and to claim the site is erroneous and misleading.
- The site is located in a Z1 residential area. The residential amenities of the area would be seriously negatively impacted should the development be permitted.

- The development is not suitable in the context of the receiving environment and the design. Existing apartment developments in the vicinity, converted existing properties which acknowledged the existing context and scale of the area.
- The development fails to comply with the 10% public open space requirement.

It is requested that permission be refused.

#### 6.2.2. **Margaret Reid**

- The application is invalid as it does not include a legal covenant to support BTR development. Without such a legal covenant, there is no vires for the PA to impose a planning condition.
- SPPR 7(a) of the Guidelines specifically requires that an application for BTR schemes be accompanied by a proposed covenant or legal agreement.
- In the absence of the legal covenant, the PA could only assess the development on the basis of a traditional apartment scheme with the relevant social housing requirements and higher standards of amenity and design quality.
- The decision of the PA is fatally flawed and unsustainable and should be overturned.
- Inadequate plans and documents breach the Planning & Development Regulations in terms of Articles 22 and 23 in terms of the site layout map incorrectly showing adjacent properties and the lack of sections or dimensioned plans of the foundations, given the proposal to provide a 3m retaining wall to the basement.
- Impacts to adjacent properties have not been considered and the plans of the foundations need to be detailed to take cognisance of the difficult ground conditions and the vulnerability and risk to adjacent property.
- The appeal references *Balscadden Residents v An Bord Pleanala*<sup>1</sup> where the decision of the Board to grant a strategic housing development was quashed

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<sup>1</sup> [2020] IEHC 586, [2020 No. 375 JR] Balscadden Road SAA Residents Association Limited and An Bord Pleanala and Crekav Trading GP Limited Judgement of Mr. Justice Richard Humphries delivered on Wednesday the 25<sup>th</sup> day of November 2020.

on the basis of the inadequacy of the plans and failure to comply with the Planning and Development Regulations.

- It is submitted that the Board is precluded from determining the application due to deficient drawings of the foundations and the retaining walls and the absence of a legal agreement clearly defining the build to rent shared housing scheme.

It is requested that the Board dismiss the decision of the planning authority and refuse permission. The appeal includes a number of enclosures.

#### 6.2.3. **Timothy O'Donovan**

- Scale of the development represents an overdevelopment of the site.
- The height of the development will have an overbearing impact and would be completely out of proportion to the adjoining properties.
- The proposed façade would look out of place and would be injurious to the character of the properties on the Merrion Road.
- The development will lead to clusters of Covid-19.

#### 6.2.4. **Fionan & Nuala Clifford**

- Issues raised in terms of the scale of the development which stretches into the rear garden and will impact immediate neighbours.
- The skyline from the appellants home will be grossly interrupted and sunlight will be affected in the winter months.
- The development will result in overlooking affecting privacy.
- Issues raised in relation to the photomontages submitted showing the trees in full bloom as it distorts the negative impact of the development on the streetscape.
- The existing front building line protrude closer to the road.
- Judicial reviews of other planning permissions took engineering factors into account and resulted in decisions being quashed. A soil investigation was

undertaken on the site, but no report was submitted. It is known that conditions are poor.

- Irish Water has indicated an inadequate water supply and highlights a fire risk.
- Co-living accommodation is now banned.
- The existing building on the site should be retained.
- Issues raised in relation to the density of the proposed development.
- The institutional style of the development jars with neighbouring properties and the long internal corridors will add to the institutional character within.

It is requested that the Board refuse permission.

#### **6.2.5. Edward & Hazel O'Flynn**

- Due consideration has not been given to the governments co-living / shared accommodation report published on 23<sup>rd</sup> November 2020.
- There are major security risks for existing residents with the influx of a large number of new inhabitants in the area. It will no longer be safe to allow children to walk close to their house with so many short-term inhabitants.
- The site is not located within the city centre where this way of life could be accepted.
- Security issues in terms of the presence of a number of Embassies in the area and the fear of attack.
- Health risks due to the global pandemic cannot be addressed by co-living.
- Structural issues for adjacent properties raised due to the size and scale of the proposed development and the extensive groundworks required.
- Inappropriate design.
- Impact on privacy.
- Merrion Road is already under huge pressure from an infrastructure perspective with large volumes of traffic on a daily basis. Traffic congestion is an increasing issue.

- The development will result in a significant increase in noise pollution both during the day and at night-time from such an overpopulated development.
- The area is largely a family residential area and the development goes against all sense of community that has taken decades to establish.

### 6.3. First Party Response to Third Party Appeals

6.3.1. The applicants' agent submitted a response to the third-party appeals. In relation to specific engineering issues raised, CS Consulting submitted a response. In relation to all other issues raised in the third-party appeals, Thornton O'Connor Town Planning submitted a response on behalf of their client. The submission includes an introduction and overview of the PAs assessment in respect of the proposed development.

6.3.2. The CS Consulting report is summarised as follows:

- A Basement Impact Assessment was carried out but not submitted following a High Court order in May 2020 which overturned the Local Authority policy as contravening the DP requirements.
- In relation to the legal case cited, there are particular differences between the two developments.
- It is not commonplace to issue detailed structural information relating to retaining walls and foundations as part of the planning process and many design elements are subject to future site investigations.
- The proposed basement is c7.8m from the site boundary and c10.15m from the gable wall of No. 96 Merrion Road. The proposed excavation of 2.5-3.4m is relatively shallow.
- Site investigations concur with the GSI Spatial Resources database which indicates Quaternary Sediments in the area as alluvium (sand and gravel). These conditions are not classified as 'difficult' ground conditions per se.
- It is submitted that the proposed basement construction will have no detrimental impact on the subsoil below adjacent properties.

- The previous permission on the site granted a larger basement, which was closer to the boundaries.
- In terms of Fire Authority Requirements and IW comments, if a building sprinkler system is required to comply with the Fire Cert, suitable onsite storage shall be provided at Lower Ground Floor level.

6.3.3. The Thornton O'Connor Town Planning submission and response to the third-party appeals, is summarised as follows:

- In relation to the amended guidelines, they do not pertain to the subject development as the application has been in the planning system since July 2020.
- It is considered that the location is appropriate for the provision of a Shared Living development due to the excellent locational characteristics being located within walking and cycling distance of many large employers, and proximate to public transport and a wide range of services and facilities in the area.
- In terms of the design, it is submitted that the proposed development is of similar height and scale to that permitted on the site and is presented in a slender block with increased separation distances from boundaries when compared to the extant permission. The proposed development cannot be considered to represent overdevelopment in this context.
- With regard to the design, amendments were made to the façade of the building to address concerns raised by the PA and there will not be an institutional character as argued by the appellants.
- The building line has not been brought forward by a very significant degree as indicated and is very similar to the extant permission on the site, previously considered acceptable.
- In relation to the demolition of existing structures on the site, it is noted that the building is not a protected structure and the principle of the demolition has already been accepted at the site.

- In terms of concerns raised in relation to Covid-19, it is submitted that this has been fully considered as part of the proposed development, noting Dr. Martin Hogan's reports.
- In relation to the request to invalidate the application due to the lack of a legal covenant, it is submitted that DCC has advised that they do not publish legal covenants on their website for public viewing as they are considered to be a private document. The legal covenant was submitted as part of the application.
- The proposed development is similar in height to the extant permission with a larger set back from boundaries and will result in no material change from the extant permission in terms of impact on daylight/sunlight.
- The proposed development will not give rise to additional overlooking in the context of the extant permission. It is also noted that the permitted balconies are omitted from the current proposal and the communal terraces will be appropriately screened to avoid any potential for overlooking to neighbouring properties.
- The proposed bedroom sizes at 16m<sup>2</sup> are 33% larger than the minimum size required by the Apartment Guidelines. The 16m<sup>2</sup> Shared Living bedroom layout has been accepted in other recent grants of permission.
- The proposed development seeks to encourage the use of sustainable modes of transport such as public transport, walking and cycling and no private car parking is provided. The non-provision of car parking spaces will ensure that there is no increase in traffic as a result of the development and there is no opportunity to cause traffic congestion as contested by the third-party appellants.
- The security risk concerns raised would suggest that no residential development would be permitted due to the influx of new inhabitants, which is unsustainable and unjustified.
- The Operation Plan submitted in support of the proposed development sets out that prevention and management of anti-social behaviour is a crucial role of the on-site management team, which includes Night Personnel.



- In relation to the note that No. 96 Merrion Road is incorrectly shown on the site layout plan, it is submitted that the building is correctly shown however a slight labelling issue occurred on the site layout map. This labelling issue was rectified on plans submitted as part of the RFI response.
- As the proposed development is a Shared Living scheme, no public or private open space requirement is set out. Such developments are required to provide amenity for residents and the proposed development provides 1,124m<sup>2</sup> of amenity space at ground floor level, amounting to 51% of the site area. In addition, the development proposes roof terraces, a gym, cinema room, function room and lounge / reception.
- The photomontages were prepared when the trees were in full bloom and represent an accurate verified view of the proposed development.

The response includes a number of enclosures, including a Basement Impact Assessment prepared by CS Consulting which includes details of borehole investigations carried out at the site. The report includes a full assessment of the baseline conditions at the site and considers the impact of the basement construction while Table 6.4 of the report provides details of mitigation measures to be employed. It is requested that permission be granted.

#### **6.4. Third Party Responses to First Party Appeal**

There are 2 third party responses to the first party appeal.

6.4.1. Reid Associates submitted a response to the first party appeal, on behalf of their client Margaret Reid, which is summarised as follows:

- The entire planning and legislative framework for the consideration of the application must have regard to the changes to the apartment guidelines and the legislation adopted on the 23<sup>rd</sup> of December 2020 which restricts co-living and the Board must have regard to the development plan or guidance in force at the time of the date of the decision of the Board.
- Reference to SPPR 9 which states that there shall be a presumption against granting planning permission for shared accommodation / co-living development.

- In terms of housing demand and supply, it is noted that there is an extant permission for a preferable form of development on the site.
- The proposed development is substandard resulting in the inclusion of a condition omitting 12 units.
- The first party appellant has raised no sustainable grounds of appeal and has relied upon previous permissions by the Board or services extraneous to the site or to the development rather than the relevant guidance and standards.
- It has been outlined in detail that the application was invalid from the outset and inadequate information has been provided in relation to proposed excavations.
- There is no legal agreement clearly defining the build to rent shared housing scheme accompanying the application and the Board are precluded from determining the application on the basis of the BTR shared residential development.

6.4.2. Valerie O'Shea submitted a response to the first and third party appeals. In relation to the response to the first party appeal, the submission restates a number of the comments contained in the third-party appeal and summarised above in Section 6.2.1. In addition, the following is relevant:

- Issues raised in relation to the change in the planning and legislative framework for the consideration of the application.
- The precedents cited in the first party appeal relate to sites which are outside of the city centre and not the appropriate locations specified in the Apartment Guidelines. The Minister highlighted this on November 23<sup>rd</sup>, 2020 when announcing amendments to the Guidelines in order to restrict future development of co-living schemes.
- In relation to the Covid 19 assessment, it is requested that the Board seek independent medical evidence and clear guidance from the HSE as to the health issues involved in a development such as the one proposed.

## 6.5. **Third Party Response to other Third-Party Appeals**

Valerie O'Shea submitted a response to the third-party appeals, supporting the points made in the appeals.

## 6.6. **Third Party Responses to First Party Response to Third Party Appeals**

There are 3 third party responses noted following the circulation of the first party response to the third party grounds of appeal.

6.6.1. Ms. Valerie O'Shea submits that she stands by the statements made in her earlier submissions. The submission is summarised as follows:

- In terms of the New Guidelines, it is submitted that there are many aspects of the proposed development which render it unsuitable but the most fundamental consideration is its location.
- In terms of the breaking of the building line, it is submitted that the proposed development fails to have regard to the character, scale and pattern of Merrion Road and that the bringing forward of the building line would have a damaging visual impact on the streetscape.
- Previous cases cited to support the applicants proposal are not relevant to the subject site as they relate to developments within District Centres.
- Impact of the building height, bulk and massing remain a concern in terms of the impact on existing adjacent properties and would not accord with the Z1 zoning.
- The public open space requirements of the CDP should be applied.
- The first party has not fully considered the issues in terms of Covid-19

It is requested that permission be refused.

6.6.2. Fionan & Nuala Clifford submitted a response to the first party response to third party appeals and submissions from Thornton O'Connor and CS Consulting Group. The submission is summarised as follows:

- The appellants property is attached to 96 Merrion Road which is adjacent to the proposed development. Any structural problems arising may also impact their property.
- Both properties have suffered from a degree of settlement due to the ground conditions which could be exasperated by the proposed development.
- References to the previous grant of permission to justify the proposed development are objected to by reference to the judgement in the Balscadden Judicial Review case. It is believed the original permission would not now be granted.
- The CS Consulting Group diagram for the basement construction is considered a weak justification for the proposal and the angle of repose would appear to be inadequate to guarantee the stability of the ground of adjacent properties.
- The submission gives rise to the possibility of concrete piles which, if necessary, would lead to future disturbance of the ground condition whether bored or driven piles to a possible depth of 7.5m or more.

Due to the inadequate engineering submission, it is requested that permission be refused.

6.6.3. Mr. Timothy O'Donovan's submission is summarised as follows:

- The development represents an overdevelopment of the site and would deny the need for quality apartment development in Dublin 4.
- Objects to the proposed shared living concept particularly with regard to being unable to provide –
  - effective social distancing or self-isolation in terms of Covid-19,
  - Work From Home requirements
  - Control the significant increase in noise to adjoining properties from the proposed roof terraces, fast food deliveries etc.

It is submitted that the concept of shared living is inappropriate for the site and it is suggested that the development would result in an intrusive form of development

and would consequently be injurious to the residential amenity of neighbouring property.

#### 6.7. **Planning Authority Response**

None.

#### 6.8. **Observations**

There are 10 observations noted in relation to this appeal from the following parties:

- |   |                           |
|---|---------------------------|
| 1. Joan Hanley                                | 4. Michael & Jane Collins |
| 2. Philip O'Reilly                            | 5. Rosemary O'Mahony      |
| 3. Dr. Freda Gorman Meagher                   | 6. Aisling Ryan           |
| 7. Kathleen O'Callaghan &<br>Bernard O'Mahony | 9. Wynn timer O'Brien     |
| 8. Pat Casey                                  | 10. Eamonn Doody          |
|   | 11. Desmond O'Malley      |

I have read all of the observations submitted and the issues raised reflect those objections to the proposed development submitted to the Planning Authority and those submitted in the third party appeals as summarised above.

## 7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the Development
2. Compliance with the Dublin City Development Plan & with National Guidelines & Standards
3. First Party Appeal
4. Visual & Residential Amenity Impacts
5. Roads & Traffic
6. Other Issues
7. Appropriate Assessment

### 7.1. Principle of the development

7.1.1. The proposed development seeks to demolish all existing structures on the site, which covers an area of 0.22ha, and to construct a Build-to-Rent Shared Living Residential Development, comprising a total of 111 no. bedspaces within 105 no. bedrooms, comprising 96 no. single occupancy, 3 no. accessible rooms and 6 no. double occupancy rooms. In addition, the development will include communal living / kitchen / dining rooms on each floor level, communal resident amenity spaces including a gym, TV/Cinema room, and function room at basement / lower ground level, a reception at ground floor level, laundry and roof terraces. The development also includes bicycle storage and bin storage areas and wider landscaping of the site.

7.1.2. The subject site is located to the south of Dublin City Centre, in the southern area of the Inner Suburb of Ballsbridge and on lands which are zoned Z1 – Sustainable Residential Neighbourhood in the Dublin City Development Plan 2016-2022 and

where it is the stated objective 'to protect, provide and improve residential amenities'. The Dublin City Development Plan supports building at higher densities in order to ensure the efficient use of land and resources, consolidating urban form and the development of compact neighbourhoods and a critical mass which contributes to the viability of economic, social and transport infrastructure.

- 7.1.3. Policy QH7 promotes residential development at sustainable urban densities throughout the city in accordance with the core strategy and promotes higher standards of urban design to integrate with the character of the surrounding area. The protection of existing residential amenities is a critical consideration of such development and I will deal with this issue further below. The Board will also note the planning history associated with the subject site and in this regard, the principle of a residential development is considered acceptable on such zoned lands.

## **7.2. Compliance with Dublin City Development Plan 2016-2022 and with National Guidelines & Standards:**

- 7.2.1. The site lies approximately 800m to the south east of the centre of Ballsbridge, and the lands zoned as District Centre, and 400m to the south of lands zoned Z6 – Employment / Enterprise Zones. The Facebook Campus is located 650m from the site and an 8-minute walk. The Spar shop is located 750m from the site and a 10-minute walk. St. Vincents Hospital is located approximately 1.5km to the south of the site, and a 17-minute walk. Merrion Road is an important route in and out of Dublin City Centre and I note that the Sandymount DART Station lies approximately 410m to the north east of the site and there are a number of bus stops located on Merrion Road.
- 7.2.2. The existing site is located to the east of Merrion Road and in an area characterised by large detached and semi-detached homes, on large sites, as well as small apartment developments which rise to a maximum of approximately 3 storeys in height, which are set back from the public roadside boundaries. The area is also known for the presence of a number of national embassies, including the British Embassy which is located directly across the public road from the site. A number of the properties in proximity to the subject site are in commercial use including guest houses. This area of Ballsbridge is located outside the district centre area and is suburban in character.

- 7.2.3. The subject site is currently occupied by Cedar Lodge, which operates as a guest house. This period two-storey property, with three storey rear extension, is set back from Merrion Road and includes a gravel car park to the front of the building. The area in the vicinity of the site can be described as being leafy, and the road is lined with trees. The style of houses in the immediate area vary greatly with a pair of semi-detached 2½ storey Edwardian houses, to the north west, and a two storey with dormer windows red-bricked apartment development to the south east.
- 7.2.4. As such, having regard to the location of the subject site, on serviced and zoned lands, together with the proximity to public transport, retail, community and social facilities, it is reasonable to conclude that in principle, the development of the site for a residential development is acceptable in this suburban residential area. The planning history of, and the extant permission on, the site, support this conclusion. I am therefore, generally satisfied that the proposed residential development, in principle, adequately accords with the Z1 zoning objective afforded to the site. The nature of the residential development, as a shared living scheme, however, requires further consideration.

The Sustainable Urban Housing: Design Standards for New Apartments, DoHPLG December 2018

- 7.2.5. Notwithstanding the adoption and coming in to effect of the new Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government, as amended on 23rd December 2020, having regard to the provisions of the new Guidelines and date, I am satisfied that the applicable Guidelines in this instance are 'The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government, issued March 2018'. This appeal is therefore assessed on its merits and having regard to the legislative provisions and guidance relating to this residential typology applicable therein.
- 7.2.6. The 2018 guidelines update the guidelines from 2015 in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply, the Government's action programme on housing and homelessness, Rebuilding Ireland and Project Ireland 2040 and the National Planning Framework,



published since the 2015 guidelines, and specific policy objectives contained in these guidelines take precedence over policies and objectives of development plans. The aims of the guidelines are to enable a mix of apartment types, make better provisions for building refurbishment and small-scale urban infill schemes, address the emerging 'build to rent' and 'shared accommodation' sectors and to remove requirements for car-parking in certain circumstances.

7.2.7. Chapter 5 of the Guidelines deal with Build-To-Rent and Shared Accommodation Sectors. The Guidelines require shared accommodation development to remain owned and operated by an institutional entity for a minimum period of not less than 15 years. The Board will note that the planning documents submitted to the Board do not include details of the legal covenant which the applicant advises was submitted to Dublin City Council. I do note however, that the applicant, Bartra Property Limited clearly advises their intention, as 'Niche Living', to develop and operate the proposed shared living residential scheme which will provide short-medium term rental accommodation predominantly for employees working in areas of substantial employment in Dublin City. It therefore falls within the definition of Shared Accommodation Developments provided in section 5.13 of the Apartment Guidelines, i.e.

“A new format of residential accommodation described as 'Shared Accommodation' has the potential to emerge as a distinct segment within the overall urban accommodation sector. This format, also known as 'Shared Living' or 'Co-living', comprises professionally managed rental accommodation, where individual rooms are rented within an overall development that includes access to shared or communal facilities and amenities.”

7.2.8. The Guidelines note that 'Shared Accommodation' has characteristics similar to student accommodation and describes one format being a residential unit comprising 2-6 bedrooms of single and / or double occupancy with a common shared area within the residential unit for living and kitchen facilities. The proposed development seeks to follow a different format to the cluster model described in the guidelines and proposes a scheme which has been developed following extensive research and analysis by the applicant. It is further noted that the Bartra model has been permitted in recent times by the Board as an alternative to the cluster model. It is also noted

that 'Niche Living' will manage and operate the already permitted Bartra BTR schemes.

Development Location:

- 7.2.9. In support of the proposed development, and to address the requirements of Section 5.18 of the Guidelines, which states that shared accommodation is only appropriate 'where responding to an identified urban housing need at particular locations', the applicant submitted a Planning Report with the application. Section 3 of the Report sets out the rationale for the proposed development and seeks to demonstrate that there is a significant need for the proposed development, given the location of the subject site in an accessible location within the urban core as well as the current shortage of housing units. The location is also considered to be accessible and proximate to a number of highly concentrated employment centres. The report further notes that there is a paucity of affordable rental options available in the local area, with 108 no. studio and 1-bedroom apartments available for rent in Dublin 4 on the 13<sup>th</sup> of July 2020. The report notes BTR developments are typically targeted, but not exclusively, to young employees with a lower emphasis on home ownership. As such, these types of residential tenure have emerged to address a specific segment of the market and are generally used as a short-medium term, non-permanent accommodation model. Section 3 of the report concludes that in the context of population growth and demographic trends, lack of available stock in the rental market and affordability, there is a demand for the proposed development.
- 7.2.10. The primary objections raised by third parties consider that this suburban location is not suitable or appropriate for the development as proposed. In the context of Sections 5.18 and 5.19 of the Guidelines, I note that BTR schemes are not envisaged as an alternative or replacement to the more conventional apartment developments and such developments are required to demonstrate accommodation need. In addition, the prevailing context of the proposed site are required to be considered with city centre being the appropriate location for such developments. The Board will also note that the primary objections raised by third parties consider that this suburban location is not suitable or appropriate for the development as proposed.

7.2.11. In this regard, I would question the suitability of the subject site to accommodate the development as proposed, and I would not agree with the applicant that the subject site lies within a central or urban core location as provided for in the Apartment Guidelines, particularly with regard to the niche nature of the proposed accommodation. The precedent cases cited by the applicant do not compare with the current site in my opinion for the following reasons:

- Eblana Avenue, Dun Laoghaire – The context of the site is different as it is located within the urban area of Dun Laoghaire on lands zoned MCT – major town centre facilities with an objective ‘to protect, provide for and / or improve major town centre facilities. This zoning objective permits residential uses.
- Rathmines site – Again, the site context is different from the currently proposed site and the land is zoned Z4 District Centre with an objective ‘to provide for an improved mixed-service facilities’. The proposed residential use is permissible in principle. In addition, Rathmines is a designated Key District Centre (KDC) in the settlement hierarchy of the City Plan and KDCs represent the top tier of urban centres outside the city centre.

7.2.12. The subject site is not located within the city centre and is not located within the district centre of Ballsbridge. The site is located in a suburban location, and somewhat at a remove from the wider range of amenities and facilities in Ballsbridge, at approximately 800m. I do accept that the site is located proximate to the Ballsbridge Facebook site and indeed, Sandymount DART station which will provide access to larger areas of employment within the City, given the context of the subject site. I also accept that there is a need in the Dublin 4 Area to provide for affordable accommodation. However, I am not satisfied that the proposed nature of the niche residential development is appropriate or acceptable at this suburban location. The Apartment Guidelines clearly set out that the location of shared living developments is a primary consideration, with the city centre and town centre locations considered the most appropriate. The Board will note the extant permission on the site for the development of 20 apartments. Having regard to the suburban location and the character of the wider area, I would consider this form of development to be more appropriate when compared to the shared living proposal currently before the Board.

Compliance with SPPR 7(a):

7.2.13. The Apartment Guidelines note that shared accommodation is a type of Build-To-Rent whereby individual rooms are rented with access to shared or communal living and kitchen facilities as well as other amenities. Section 5.7 of the Guidelines note that BTR schemes can deliver housing to the rental sector over a much shorter timescale than traditional housing models and can therefore make a significant contribution to the necessary increase in housing supply. As such, the proposed development falls within the definition of BTR development, and the units must comply with the requirements of SPPR 7 of the Apartment Guidelines.

7.2.14. SPPR 7 of the Guidelines provides that BTR development must be:

- (a) Described in the public notices associated with a planning application specifically as a 'Build-to-Rent' housing development that unambiguously categorises the project (or part thereof) as a long-term rental housing scheme, to be accompanied by a proposed covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains as such. Such conditions include a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period;
- (b) Accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development. These facilities to be categorised as:
  - (i) Residential support facilities – comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.
  - (ii) Residential Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

7.2.15. In terms of compliance with SPPR 7 (a), the development has been described as a 'Build-to-Rent Shared Living Residential Development' in all public notices, and while the applicant has advised that a draft covenant has been submitted to Dublin City Council in the Response to Third Party appeals, there is no other reference to this document. While Section 3 of the Shared Living Report submitted with the application sets out compliance with SPPR 7(b), I do accept that the applicant has indicated elsewhere in reports that the development is to be developed and operated by Bartra, the applicants and that on completion of the development, the shared accommodation units will be used as residential accommodation. In this regard, it would appear that the proposed development shall remain owned and operated by the applicant.

7.2.16. The Operational Plan and Shared Living Reports submitted with application indicate that that the accommodation will be managed by an on-site team during the core hours of 7am to 10pm daily, with the general manager present from the afternoon to night. In addition, security will be provided. I have no objections to the proposed management of the development as indicated. However, given specific requirements of SPPR 7(a) of the Guidelines, I am not satisfied that this is acceptable or in compliance with said requirements. There is no clear timeline for maintaining ownership or management of the scheme provided and I note Section 6.15 of the Guidelines which state that 'Build-To-Rent and Shared Accommodation schemes, where there is a commercial entity owning, or operating and maintaining the development, may by their nature have different arrangements and obligations'. In the absence of sight of the Legal Covenant, I am not satisfied that it is appropriate to include conditions if permission was to be granted to ensure that no shared accommodation unit shall be rented or sold separately for a minimum of 15 years. The Board may consider requesting the details of the Legal Covenant that the applicant advises was submitted to Dublin City Council by way of a further information request.

Accommodation Proposed:

7.2.17. The development includes 96 no. rooms described as Shared Living Accommodation and providing 111 bed spaces. The rooms range in floor area between 16m<sup>2</sup> for single occupancy rooms to 18m<sup>2</sup> for double occupancy. The scheme also proposes three no. accessible rooms with a floor area of 24.8m<sup>2</sup>. All rooms include an ensuite

with separate shower, storage, kitchen which includes a microwave, kettle, toaster and sink with the sitting area providing wall mounted foldaway bed / fold out couch to facilitate a double bed. In terms of the offer within the bedrooms, and whether they might be considered a 'dwelling' under the Residential Tenancies Act 2004, I note that under a similar form of development, the Board accepted a legal opinion which concluded that....

'the definition of a dwelling under the Act (a) is physically constructed as a self-contained residential unit and (b) is let for rent. The Opinion considers that the bedrooms within the development would not be self-contained residential units available for letting within the meaning of Section 4 of the Residential Tenancies Act or within the scope of the Housing (Standards for Rented Houses) Regulations, 2017.'

I am satisfied that this is acceptable.

7.2.18. In terms of SPPR 7(b), it is required that BTR developments be accompanied by detailed proposals for (i) residential support facilities and (ii) resident services and amenities. As such, the following is relevant;

<b>Level</b>	<b>No. of Bed Spaces</b>	<b>Communal Living/Kitchen/Dining</b>	<b>Floor Area</b>
<b>Lower Ground floor</b>	8	Kitchen	33.5m <sup>2</sup>
<b>Ground Floor</b>	20	Kitchen	80.7m <sup>2</sup>
<b>1<sup>st</sup> Floor</b>	21	Kitchen	80.7m <sup>2</sup>
<b>2<sup>nd</sup> Floor</b>	27	Kitchen	80.7m <sup>2</sup>
<b>3<sup>rd</sup> Floor</b>	21	Kitchen	80.7m <sup>2</sup>
<b>4<sup>th</sup> Floor</b>	14	Kitchen	46.3m <sup>2</sup>
			<b>402.6m<sup>2</sup></b>

7.2.19. Section 5.15 of the Apartment Guidelines reference a form of shared accommodation primarily used for student accommodation, ie 6-8 single / double bedrooms with shared living and kitchen facilities. Table 5a provides minimum bedroom sizes while Table 5b deals with common living and kitchen facilities floor

areas. I am satisfied that all of the proposed bedrooms as part of the shared accommodation element comply with the requirements of Table 5a.

7.2.20. In terms of Table 5b the guidelines require a minimum floor area of 8m<sup>2</sup> per person for bedrooms 1-3, with an additional 4m<sup>2</sup> for bedrooms 4-6. This equates to an average of 6m<sup>2</sup> per person, and a requirement for 666m<sup>2</sup> of communal living / kitchen facilities. The proposed development will provide a total floor area of 403m<sup>2</sup> of communal living / kitchen / dining areas for 111 residents. Therefore, the information submitted indicates that 3.63m<sup>2</sup> per bed space is provided within the scheme overall. The Board will note that this figure does not accord with the requirements of Table 5b of the Guidelines and that the applicant has argued that the proposed development reflects closely the characteristics of 3 Shared Living schemes which have been granted by the board.

7.2.21. The difference between the cited cases, however, is that the Eblana Avenue scheme in Dun Laoghaire for example, included a specific condition which required that all bedrooms shall be provided with functional kitchens to include cooking hobs. In an effort to justify the above figures, the current application submits that not only will the development support workers who are employed by international companies who offer full meals, the purpose of the shared living experience is to encourage social interaction with others living in the scheme through using the communal kitchens for cooking. In this regard, I do not accept that the proposed development provides an appropriate level of communal amenity space for future occupants. In addition, I would have serious concerns with including a condition in any grant of planning permission which requires the provision of additional cooking facilities in rooms due to their limited size. The result of such a condition would, in my opinion effectively result in the provision of severely inadequate studio apartments, which would not meet the minimum requirements and would not correlate with the principles of the shared living concept.

7.2.22. In addition to the above, the Apartment Guidelines require that BTR developments include proposals for (i) Residential support facilities and (ii) Residential Services and Amenities. In this regard, the following is relevant:

Level	No. of Bed Spaces	Resident Support Facilities, Services and Amenities	Floor Area
<b>Lower Ground floor</b>	8	Gym	85.4m <sup>2</sup>
		TV/Cinema Room	67.6m <sup>2</sup>
		Function Room	50.8m <sup>2</sup>
		Linen Store	16.1m <sup>2</sup>
		Laundrette	16.1m <sup>2</sup>
		Bin Store	20m <sup>2</sup>
		External Amenity Space	1,123.9m <sup>2</sup>
<b>Ground Floor</b>	20	Concierge / Reception / Lounge	90m <sup>2</sup>
<b>3<sup>rd</sup> Floor</b>	21	Roof Terrace	78.3m <sup>2</sup>
<b>4<sup>th</sup> Floor</b>	14	Roof Terrace	111.5m <sup>2</sup>
			<b>1,659.7m<sup>2</sup></b>

7.2.23. In terms of SPPR 9, and the requirement to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity, I note the proposed development comprises 3 specified areas of external communal amenity space. These areas include the ground level area of 1,123.9m<sup>2</sup> and two roof terraces, 1 at level 3 comprising 78.3m<sup>2</sup> and 1 at level 4 comprising 111.5m<sup>2</sup>. The level 3 roof terrace is located to the rear of the building, facing north east and the level 4 spaces are proposed as two terraces which will be accessed off the communal kitchen area to the front, south west, of the building.

7.2.24. In addition, I note that the proposed development provides for other amenities including a gym, TV / Cinema room, which will accommodate up to 15 people outside of a Covid-19 required social distancing scenario, a function room and a lounge. The communal kitchens, while sizable, are proposed to operate on a 'slot booking' schedule between the hours of 4pm and 9pm in order to facilitate residents preparing meals. In addition, I would question whether the laundrette as proposed, with a floor area of 16.1m<sup>2</sup> is adequate to accommodate the number of potential residents within the scheme.

7.2.25. While I would accept that the quality of the proposed landscaping for the site is very good and that the development provides adequate amenities for future residents,



together with the flexibility provided for in the Apartment Guidelines for the provision of communal amenity, if the external amenity spaces are excluded from the above figures, the result in the provision of 4.8m<sup>2</sup> of additional amenities per person within the development. Given my concerns in terms of the provision of communal living / kitchen / dining areas, I am concerned that the proposed development does not fully accord with the Table 5b of the Guidelines and would not provide an enhanced overall standard of amenity as required.

### 7.3. First Party Appeal

7.3.1. The Board will note that the PA included condition 3 in the decision to grant permission which states as follows:

3. Prior to the commencement of development the applicant shall submit revised plans for the written consent of the Planning Authority, which omit the following bedrooms from each of the floors and instead designate and utilise these spaces as communal living spaces:

- (i) Ground floor standard rooms 19 and 20.
- (ii) First floor standard rooms 19 and 20.
- (iv) Second floor double rooms 21, 22 and 23.
- (v) Third floor double rooms 15, 16 and 17.
- (vi) Fourth floor standard rooms 13 and 14.

**Reason:** In the interest of the residential amenity of the units

7.3.2. The applicant considers that this condition is unnecessary and will negatively impact the viability of the proposed development, with the loss of 16.2% of the proposed bedspaces. It is submitted that the reduction in the bedspaces 'will not achieve the sustainable development of this core urban site'. It is further submitted by the first party that the proposed Niche Living Model, 'provides a higher quality private space than provided in the cluster format facilitate additional in-room cooking and dining if required' and is a superior format.

7.3.3. I note the logic of the planning authority in their determination of the provision of communal living space on each floor, and overall, I would agree that each floor

should have additional communal living spaces to improve the residential amenity for future residents. The inclusion of the condition as written, should the Board be minded to grant permission in this instance, will result in the provision of approximately 6.5m<sup>2</sup> communal living / kitchen facilities per person within the scheme which will accommodate 93 people. I consider this to be more appropriate and acceptable in the context of the site location outside the urban core of Ballsbridge.

- 7.3.4. Should the Board be minded to grant planning permission in this instance, I recommend that Condition 3 be included.

#### **7.4. Visual & Residential Amenity Impacts**

- 7.4.1. The proposed development site is located within the suburbs of Ballsbridge on Merrion Road where the existing properties generally comprise two - three storey buildings, of varying designs and set back from the roadside boundaries. The existing building on the site comprises a two storey which has a traditional design with a hipped slate roof, with a modern three storey rear return. The proposed development will introduce a modern five storey building over lower ground floor which will be set closer to the public footpath. The Board will note that a number of third parties have raised concerns in terms of the scale, height and massing of the proposed development. It is submitted that the development will have a significant impact on the existing character of the area.
- 7.4.2. I note that the subject site does not include a protected structure, nor is it located within a residential conservation area. Following my site inspection, I would also note that there is no real uniformity to the existing building forms or styles along Merrion Road. As such, while I acknowledge that the proposed development will represent a different form of development, having regard to the planning history of the subject site, where an apartment building of similar scale has been granted by the Board in recent times, I am satisfied that the development can be considered acceptable in principle in terms of visual impact. I also note the amendments made to the elevations following the request for further information from Dublin City Council. I consider the amended elevations to be acceptable.

- 7.4.3. The Dublin City Development Plan, 2016-2022, at Section 16.7, provides guidance and standards for building height limits within the City. The subject site is located within 410m of the Sandymount DART Station, a Rail hub, which is an area listed within the low-rise (up to 24m commercial and residential) height category. The proposed development will rise to 5 storeys and will have an overall height of 17.4m at total height of the lift shaft and the main bulk of the building rising to approximately 16m. This height falls below the maximum building height as provided for in the City Development Plan and as such, does not contravene the Dublin City Development Plan. The issue of height is raised by observers to the appeal. The Planning Authority, however, considered that the development as proposed complies with the City Development Plan 2016-2022 in terms of height.
- 7.4.1. The Urban Development and Building Height Guidelines for Planning Authorities (Dec 2018), builds on the wider national policy objective to provide more compact forms of urban development as outlined in the National Planning Framework. In contrast to the City Development Plan, increased building heights is identified as having a critical role in addressing the delivery of more compact growth in urban areas, particularly cities and larger towns. Specific Planning Policy Requirements (SPPRs) of the height guidelines take precedence over any conflicting policies, and objectives of the Dublin City Development Plan.
- 7.4.2. I have no objection in principle to the height of the building on the site and would consider same to comply with national policy which seeks to achieve greater height and densities in appropriate urban areas adjacent to quality public transport routes.
- 7.4.3. In support of the proposed development, the applicant submitted a Landscape & Visual Impact Assessment as well as a number of photomontages to depict the development as proposed. The Landscape & Visual Impact Assessment report, at Section 6, considers the visual impact of the proposed development sets out the predicted impacts of the proposed development during the construction and operational stages, while Section 7 provides details of remedial or reductive measures to remedy or offset negative or adverse effects. The Visual Impact Assessment includes a number of photomontages and concludes that the development, when viewed directly from Merrion Road facing north, will give rise to a significant impact, while other viewpoints were considered to range between slight/moderate, moderate to moderate/significant. The report concludes that the

development is considered to have a permanent impact on the landscape but submits that a detailed maintenance plan should be agreed with a landscape contractor so that an attractive landscape setting is created and maintained for the occupiers and general public.

- 7.4.4. Overall, and in the context of the planning history of the site, I consider that the proposed development would represent an acceptable form of residential building which would not significantly impact on the visual amenities of the area and would be appropriate to the character of the streetscape. My concerns in terms of the intended nature of the residential use of the building have been addressed above, including my concerns as they relate to the amenities of future residents.

Public Realm:

- 7.4.5. In terms of residential amenity and the public realm, the Board will note that the proposed development includes a proposal to remove a street tree in order to facilitate the proposed access to the site. While concerns have been raised in this regard, I note that under the extant permission on the site, permission has been granted for the removal of the tree. I am satisfied that as part of the planning application documentation, the applicant has submitted a detailed landscaping plan for the site, which I consider to be appropriate and acceptable.

Residential Amenity Impacts:

- 7.4.6. In addition to the above, the Board will note that the applicant submitted a Site Planning for Daylight & Sunlight Report, prepared by JV Tierney & Co. This report seeks to address and quantify the impact of the proposed development on existing adjacent properties, and it is noted that a 3D geometric model of the site was created using software IES-VE. The analysis procedure takes into account a number of daylight and sunlight calculation methodologies including Light from the Sky, Loss of Sunlight, Gardens and Open Spaces and Average Daylight Factor.
- 7.4.7. The analysis involved a number of properties in the vicinity of the site and considers the impact of the development on third party properties in the context of the extant permission on the site. The report concludes that the proposed development has no material difference in terms of daylight and sunlight impact on adjacent properties and the difference in overshadowing between the two schemes is negligible with

some slight improvements in areas. I am satisfied that no further significant impacts arise in terms of the current proposed development in this regard.

- 7.4.8. A number of third-party appellants have raised concerns in terms of the increased potential for overlooking arising due to the increased number of windows, and residents, within the current proposed scheme. I note the proposals to install fritted glass in the proposed windows which will minimise the potential for overlooking of existing residential properties. Fritted glass is glass which has been fused with ink / printed which provides various levels of opaqueness from the bottom of the pane to clear glass at the top. As such, the glass will restrict views at eye level but will facilitate views of the sky from the rooms while protecting the residential amenity of adjacent properties.
- 7.4.9. In terms of concerns raised in relation to increased noise, I am generally satisfied that the proposed external spaces proposed are designed as such to preclude overlooking and are of a scale which will not result in excessive numbers of people congregating. I am also satisfied that the management plan for the development will include night personnel and security which will reduce the potential for anti-social behaviour at the development.
- 7.4.10. I am generally satisfied that the development, if permitted as proposed, is unlikely to have an additional significant adverse impact on the general or residential amenities of the wider area.

## **7.5. Roads & Traffic**

- 7.5.1. Access to the site will be via Merrion Road with adequate space provided to facilitate service trucks and vehicles. A separate pedestrian access is also proposed. The applicant included a Transportation Report as part of the planning documentation. The report notes that no car parking is proposed at the site and the Sustainable Urban Housing: Design Standards for New Apartments, DoHPLG December 2018, section 4.18 and 4.19, facilitate the reduction in the provision of car parking spaces, or the elimination of such provision in certain circumstances. I am satisfied that this is acceptable given the context of the site and the proximity to public transport modes.

- 7.5.2. In terms of cycle parking provision, the development site is again, located within Zone 2 in the City Development Plan for cycle parking. To serve the proposed development, 1 cycle parking space is required per residential unit. The development proposes 118 bicycle parking spaces in the form of two-tier bicycle racks with E-bike charging points, triple height lockers for foldable bikes, and a bike repair station all located along the north western boundary of the site for use by residents. In addition, the site layout plan provides for 22 visitor bicycle parking spaces in the south eastern area of the site. I am satisfied that the proposed cycle parking provision is acceptable.
- 7.5.3. The layout of the site has been amended to provide for a drop off area and a car club space is proposed for the scheme. I am generally satisfied that the development will have a negligible and unnoticeable change in traffic conditions locally in terms of car movements. A Mobility Management Plan is also to be put in place by the developer to encourage and support more sustainable travel patterns among both residents and visitors at the proposed development.

## 7.6. **Other Issues**

## 7.7. **Water Services**

- 7.7.1. In terms of water services, the Board will note that the applicant submitted an Engineering Services Report in support of the proposed development. This report, prepared by Cronin & Sutton Consulting Engineers (CS Consulting Group), assesses the proposed development under a number of headings relating to foul drainage, stormwater drainage, potable water infrastructure and flood risk assessment. The proposed development will connect to the public water supply and foul sewer. The applicant submits that a Pre-Connection Enquiry has been submitted to Irish Water and a confirmation of feasibility has been received. With regard to the concerns raised in relation to Fire Authority requirements, and IW comments in this regard, it is noted that a sprinkler system, and suitable onsite storage, is proposed to comply with the Fire Certificate.
- 7.7.2. In terms of stormwater drainage, the proposed development will incorporate the principles of Sustainable Urban Drainage Systems, SuDs to reduce any post development run-off to pre-development discharge rates. The development will

attenuate storm water in an underground tank and will restrict flow to the public drainage network to 2l/s by the use of a flow control device. The system will also use an oil separator to remove harmful matter before entering the public network.

7.7.3. With regard to flooding, the Board will note that the Flood Risk Assessment submitted with the application notes that the proposed development site is located within a Flood Zone C which indicates a low probability of flooding. Having regard to the planning history of the site, and in terms of the information submitted, I am generally satisfied that the development can be accommodated in terms of water services. I also note that the Drainage Division of Dublin City Council has raised no objection to the proposed development.

#### 7.7.4. **Part V**

The proposed development does not include any Part V proposals. Section 5.21 of the Apartment Guidelines states:

‘In addition to the above, as is the case with student accommodation projects, shared accommodation units will not normally be subject to Part V requirements in relation to the reservation of 10% of the units as social housing because shared accommodation would not be suitable for social housing given that they are not provided as individual self-contained residential units.’

As such, I am satisfied that the proposed shared accommodation development will not be subject to Part V requirements.

#### 7.7.5. **Development Contribution**

The subject development is liable to pay development contribution under Section 48 of the Planning and Development Act 2000, as amended. A condition to this effect should be included in any grant of planning permission.

#### 7.7.6. **Other Third-Party Issues**

##### Nature of Development:

The Board will note that the third-party appellants have raised concerns in terms of the nature of the proposed residential element of the scheme. There is an extant

permission which is valid for the subject site, whereby planning permission was granted for 20 apartments. Third party appellants had submitted concerns in terms of the granting of a development which is perceived to support transient residents which will not support the local community. The large number of potential residents accommodated on the site is also raised as a concern. I would accept that the proposed development is an alternative form of residential offer to the usual house / apartment, as provided for in the 2018 Apartment Guidelines. Notwithstanding the adoption and coming into effect of the new Sustainable Urban Housing: Design Standards for New Apartments issued by the DoEC&LG, as amended on 23rd December, 2020, I am satisfied that the applicable Guidelines in this instance are 2018 Guidelines. This appeal is therefore assessed on its merits and having regard to the legislative provisions and guidance relating to this residential typology applicable therein.

#### Covid-19:

A Risk Assessment was performed by Corporate Health Ireland in relation to the potential transmission of Covid in the proposed co-living building. The report considers the risk of transmission between persons in the co-living development to be low, and likely to be less than for people living in a normal house or shared apartment. It is also submitted that the self-contained nature of the private suites dramatically reduces the risk of transmission of the virus and makes suites ideal for self-isolation or quarantine if required. I also note the cleaning regime proposed for the overall development.

The Board will note the third-party concerns raised in terms of the current global pandemic, and the appropriateness of the Shared Accommodation Model. I would agree to an extent with the concerns in terms of the number of people accommodated in the proposed kitchen / dining and living spaces proposed. I also note the submission of the applicants' specialist in this regard who suggests that sub-dividing the units into smaller units would be counter-productive as it would limit opportunities for social distancing that is available in larger spaces.

I am satisfied that the applicant has considered the impact of Covid-19 as part of the proposed development. I would have concerns however, considering the units as 'self-contained', given the lack of in-room cooking facilities provided. I have



considered this matter carefully and have already addressed concerns in terms of the amenities proposed for residents. I have also made recommendations to the Board in terms of the inclusion of the PAs condition 3 to increase and improve these amenity facilities within the building. In addition, I note the extant permission for apartments on the site. It is also of course open to the Board to consider combining units to provide studio or 1 bedroom type units across the residential accommodation provision.

#### Details of Plans & Documents:

A third-party appellant has raised concerns in terms of the adequacy of the plans and documents submitted in support of the proposed development. It is submitted that they breach the Planning & Development Regulations in terms of Articles 22 and 23 as the site layout map incorrectly shows adjacent properties and does not include sections or dimensioned plans of the foundations. Given the proposal to provide a 3m retaining wall to the basement, this is considered significant. It is submitted that the impacts to adjacent properties have not been considered and the plans of the foundations need to be detailed to take cognisance of the difficult ground conditions and the vulnerability and risk to adjacent property.

I have considered the issues raised in the third-party submissions in this regard. I also note that a Basement Impact Assessment was carried out by the applicant and submitted to the Board. I am satisfied that adequate information is provided in this regard.

#### Security Risk:

The Board will note that a concern was raised in relation to a potential security risk arising from the proposed development. There is no evidence to suggest that a grant of planning permission will give rise to such a risk and given the nature of the site location, I consider it reasonable that a residential development in principle is acceptable.

### **7.8. Appropriate Assessment**

- 7.8.1. The Board will note that the applicant, in support of the proposed development, submitted an Appropriate Assessment Screening Report. The subject site is located within an established suburban area and comprises buildings and garden areas,

which are considered to be of negligible ecological significance. The site is not located within any designated site.

7.8.2. Section 4 of the AA Screening Report identifies the Natura 2000 sites potential affected by the proposed development, including 19 sites, with the South Dublin Bay SAC (& pNHA)(site code 00210) and the South Dublin Bay and River Tolka Estuary SPA (site code 004024) being the closest at approximately 1km to the east of the site. Section 5 of the AA Screening Report identifies potential impacts and presents an assessment of significant effects. The report submits that pathways between the site and the Natura 2000 sites in Dublin Bay are via surface water drainage and wastewater drainage as the proposed development will connect to existing Irish Water sewers for both surface water and foul water, which will be treated at Ringsend WWTP before discharge. I would agree that there is no relevant hydrological connectivity to any European site. I am also satisfied that there are no effects arising which could act in combination with the subject proposal to result in significant effects to Natura 2000 sites.

7.8.3. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## 8.0 Recommendation

I recommend that planning permission be refused for the proposed development for the following stated reasons.

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within a suburban area of Ballsbridge, it is considered that the proposed shared accommodation residential development would be contrary to Section 5.19 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities which advise that this type of development is only appropriate where responding to an identified accommodation need at particular locations and that such development should be sited in city centre locations. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development by reason of the shortfall in provision of common living and kitchen facilities for the shared accommodation contrary to the standards set out in Table 5b of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities coupled with inadequate in room facilities and amenities, would result in a substandard form of residential development to serve future occupants. The proposal would be contrary to national and local policies which seek to deliver attractive and desirable housing options in appropriate locations, would set an undesirable future precedent and as such would be contrary to the proper planning and sustainable development of the area.

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A. Considine  
Planning Inspector  
26<sup>th</sup> March 2021