



An
Bord
Pleanála

Inspector's Report ABP 309667-21.

Development	Demolition of existing buildings, (with the exception of part of No 39 Clanbrassil Street Upper, a two storey take-away restaurant) and construction of mixed-use development of fifty-two apartments in two blocks and associated works.
Location	Nos, 39, 40, 42, 42 and 42A Clanbrassil Street Upper, Dublin 8.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	3619/20
Applicant	Clopen Ltd.
Type of Application	Permission
Decision	Grant Permission
Third Party Appellants	<ol style="list-style-type: none">1. Garden Terrace Residents Assoc.2. Geraldine Hall and Ciaran Rogers.3. Caroline Butler.
Observers	<ol style="list-style-type: none">1. Longwood Avenue Residents Assoc.2. Philip O'Reilly3. Melissa Murray4. Paola Mereu5. Karin Hand and Francis Curran.
Date of Inspection	12 th July, 2021
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site has a stated area of 1,150 square metres and is on the eastern side of Clanbrassil Street Upper a short distance north of the Grand Canal and Harold's Cross Canal Bridge (Robert Emmet Bridge) and south of the junction with South Circular Road (Leonard's Corner).
- 1.2. It comprises two areas which are separated by Orr's Terrace, an access lane which extends from Clanbrassil Street eastwards and then northwards at the rear of properties on Clanbrassil Street and on Longwood Avenue to the east side. The area on the southside of the lane comprises No 39 Upper Clanbrassil Street and buildings to the rear to the south side of which is O'Reilly's Cottages another lane off Clanbrassil Street Upper. The area on the north side of Orr's Terrace comprises the single storey structures in for formally in a range of uses at Nos 40, 42, 42 and 42A Clanbrassil Street Upper and various structures and vacant lands at the rear. The rear boundaries of both areas adjoin the rear access lane on the opposite side of which are the garages and rear gardens of the houses on Longwood Terrace.
- 1.3. Garden Cottages comprising small single storey terraced cottages with front gardens are located along a narrow access lane extending from Clanbrassil Street Upper westwards as far as an infill apartment development is at the northern end of the site. There is a high rubble stone wall along the southern side of the lane. A row of single storey 19th Century cottages front onto Garden Lane directly north of the site and face directly onto the northern boundary of the site.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for a development of twenty-eight apartment and a takeaway restaurant and it is stated to be a revised proposal to address the reasons for the prior refusal of permission for a thirty-six-unit apartment development. (P. A. Reg. Ref.3955/19 /PL 306031 refers. Details are in section 4 – Planning History below.) The proposals consist of: -

Demolition of existing buildings, structures, and hardstanding areas on site except for the front section of the two-storey building at No 39 in which is a

takeaway restaurant was operated at ground level but which is now vacant is to be retained.

Construction of a two block, mixed-use scheme development providing for twenty apartments with balconies and/or terraces (17 one bed units and 11 two bed units and two commercial units.

Block 1, a part two storey and part two and half storey pitched roof block of four own door duplex apartments is to be constructed at the rear of No 39 Upper Clanbrassil Street (which is to be retained) on southern side of Orr's Terrace. A takeaway restaurant is to be located on ground and first floor levels at the existing building at No 39 Clanbrassil Street Upper.

Block 2 is a three and four storey building to be constructed on the site assembled from the properties on the north side of Orr's Terrace extending as far as Garden Terrace at the northern end. A retail unit is to be located at ground level and twenty-four one and two bed apartments are to be located across the three upper floors. Included for Block 2 is a landscaped courtyard and roof terrace.

Provision for an increase in the width of the laneway along the frontage of the Garden Terrace Cottages and new hard and soft landscaping.

The application also includes proposals for site development works, plant, refuse storage, cycle storage, boundary treatments and services. There is no provision for on -site parking in the proposal.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 19th February, 2021 the planning authority decided to grant permission for the proposed development subject to conditions, most of which are of a standard nature.

Under Condition No 3, the grant of permission omits short-term letting use for the apartments.

Under Condition No 4 there are requirement for compliance submissions for the proposed commercial/retail units with regard to nature of use, control of noise and emissions and hours of operation.

Under Condition No 5 there is a requirement for a compliance submission for the courtyard and roof terrace proposed for Block 2.

Under Condition No 6 there are requirements for compliance with the Transportation Planning Division which includes preparation of a construction management plan, a mobility management plan and appoint a mobility manager public lighting and upgrading works for Orr's Terrace.

3.2. Planning Authority Reports

- 3.2.1. The report of the transportation Planning Division indicated a recommendation for a request for additional information with regard to pedestrian access locations and refuse storage, pedestrian priority over Orr's Terrace, swept path analysis, rights of way over the laneway at the rear of Longwood Avenue and construction access via O'Reilly's Cottages.
- 3.2.2. The supplementary report indicated satisfaction with the further information submission details, subject to resolution of final details by conditions.
- 3.2.3. The planning officer, further to assessment of the original proposal, and to issue of a request for additional information in respect of the proposed restaurant/commercial uses particularly with regard to noise, ventilation and extraction, pedestrian access and priority, swept path analysis (for services vehicles) at Orr's Terrace, rights of access and title over the lane at the eastern boundary at the rear of the site and

review of the response and the third party submissions the planning officer indicated satisfaction with the proposed development

3.3. **Third Party Observations**

Multiple submissions were lodged by third parties in which issues of concern raised include that of overdevelopment, excessive height, inappropriate design, overshadowing and overlooking, objections to removal of the gates at Orr's Terrace and at O'Reilly's Cottages, traffic congestion and increased demand for insufficient on street parking.

4.0 **Planning History**

P. A. Reg. Ref. 3676/20: This was a concurrent application for permission for (1),demolition of existing buildings, structures and hardstanding areas on site except for northern boundary wall adjoining garden terrace; (2) The construction of a mixed-use development of 11 no. residential units with associated gardens and balconies/terraces comprising 1no. 1-bedroom units, 3 no. 2-bedroom units, 1 no. 3-bedroom unit and 6 no. 4-bedroom units and 2 no. commercial units located in 2 no. blocks (Block 1 & Block 2); Block 1 comprises a 2-3 storey building at 39 Clanbrassil Street Upper accommodating 1 no. retail/retail services unit at ground floor (fronting onto Clanbrassil Street Upper), 1 no. 1-bedroom duplex apartment over the retail unit and 3 no. 2 bedroom, 2-storey terraced townhouses over parking garages extending along Orr's Terrace; (4) Block 2 comprises a 2-3 storey building at 40, 41, 42 & 42A Clanbrassil Street Upper accommodating 1 no. shop/retail services unit at ground floor level (fronting onto Clanbrassil Street Upper). 1 no. 3-bedroom duplex apartment over the retail unit and 6 no. 4-bedroom 3-storey terraced townhouses extending along Orr's Terrace; (5) All ancillary site development works, plant areas, refuse storage areas, bicycle storage areas, boundary treatment works and services. Permission was granted on 21st March, 2021 subject to standard conditions.

P. A. Reg. Ref.3955/19/ PL 306031: The planning authority decision to refuse permission for demolition of the buildings, with the exception of the front section of No 39A Clanbrassil Street Upper and for construction of sixty-eight apartments in two blocks was upheld following appeal based on the following three reasons:

“1. Having regard to the design, scale, mass and bulk of the proposal and the proximity of the development to adjoining properties, it is considered that the proposed development would constitute an overdevelopment of the site and would have an excessively overbearing, overshadowing and overlooking effect on adjoining properties. The proposed development fails to integrate or be compatible with the design and scale of adjoining buildings and as a result, would seriously injure the visual amenities of the streetscape and would have an adverse impact on the character of the area. The proposed development, would, therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity, would be contrary to the provisions of the development plan and would be contrary to the proper planning and sustainable development of the area.”

“2. It is considered that the number of apartments in Block A would receive inadequate daylight and sunlight given the proximity to Block B and would therefore seriously injure the residential amenities of future occupants/residents, and accordingly would be contrary to the proper planning and sustainable development of the area.”

“3. The Board is not satisfied that the developer has demonstrated that he can provide adequate arrangements for refuse collection, access for emergency vehicles and deliveries and considers that the proposed development would endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.”

5.0 Policy Context

5.1. National Planning Framework

- 5.1.1. One of the key shared goals set out in the National Planning Framework is to achieve compact growth. This is sought by carefully managing the sustainable growth of compact cities, towns, and villages. It is noted that the physical format of urban development in Ireland is one of the greatest national development

challenges. Presently the fastest growing areas are the edges and outside our cities and towns meaning:

- 5.1.2. A constant process of infrastructure and services catch up in building new roads, new schools, services and amenities and a struggle to bring jobs and homes together meaning that there were remarkably high levels of car dependents and that it is difficult to provide good quality transport.

A gradual process of rundown of the city and town centre.

Development which takes places in the form of greenfield sprawl extends the physical footprint of the urban area and works against the creation of attractive liveable high quality urban spaces in which people are increasingly wishing to live, work and invest.

- 5.1.3. A preferred approach would be the compact development that focuses on reusing previously developed brownfield land building up infill sites which may not have been built on before and reusing and redeveloping existing sites and buildings. National Policy Objective 3B seeks to deliver at least half of all new homes that are targeted in the five cities and suburbs of Dublin, Cork, Limerick, and Galway within their existing built-up footprints. National Policy Objective 13 seeks that in urban areas planning and related standards including in particular building height and car parking will be based on performance criteria that seek to achieve well designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes provided public safety is not compromised and the environment is suitably protected.

- 5.1.4. 9.1.3. National Policy Objective 35 seeks to increase residential density in settlements, to a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

- 5.2. **Sustainable Urban Housing Design Standards for New Apartments, 2020**, (Apartment Guidelines) issued under Section 28 of the Planning and Development Act, 2000 as amended.

5.2.1. The Apartment Guidelines provide for the following:

- 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.
- Remove requirements for car parking in certain circumstances where there are better mobility solutions to reduce costs.

5.2.2. According to the guidelines: the most suitable locations are central and/or accessible urban locations such locations are generally suitable for small to large scale higher density development that may wholly comprise of apartments such as within walking distance of the principle city centres or significant employment locations that may include hospitals and third level institutions, sites within reasonable walking distance (i.e. up to 10 minutes or 800 metres to 1,000 metres) to/or from high capacity urban public transport stops such as Dart or Luas and sites within, easy walking distance (i.e. up to five minutes to and from high frequency urban bus services).

5.2.3. **“Urban Development and Building Heights: Guidelines for Planning Authorities”**, (The Building Height Guidelines) issued under Section 28 of the Planning and Development Act, 2000 as amended.

According to Special Planning Policy Requirement (SPPR1) it is government policy to support increased building height and density in locations with good public transport accessibility, particularly town/city cores, Planning Authorities shall explicitly identify through the statutory plans, areas where increased building heights will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.

According to SPPR 2 n driving general increases in building heights, Planning Authorities shall also ensure appropriate mixtures of uses, such as housing, commercial and employment development, are provided for in the statutory plan context.

5.3. Development Plan

- 5.3.1. The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site is subject to the zoning objective Z1: *“To protect provide and improve residential amenities.”*
- 5.3.2. The location is within a “Low Rise Area – Inner City” according to section 16.7.2 allowing for a maximum height of twenty-four metres for residential development and twenty-eight metres for commercial development. Policies and standards for Infill development is set out in section 16.10.10.
- 5.3.3. Policy QH5 seeks to promote residential development addressing any shortfall in housing provision through active land management and co-ordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites, and underutilised sites.
- 5.3.4. Policy QH6 seeks to encourage and foster the creation of attractive mixed use, sustainable neighbourhoods which contain a variety of housing types, tenures with supporting community facilities, public realm and residential amenities which are socially mixed in order to achieve a socially inclusive city.
- 5.3.5. Policy QH7 seeks 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.
- 5.3.6. Policy QH8 seeks to promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and character of the area.
- 5.3.7. Policy QH18 seeks to promote the provision of high-quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and with each apartment development, and ensuring that suitable social

infrastructure and other support facilities are available in the neighbourhood, in accordance with standards for residential accommodation.

- 5.3.8. Policy QH19 seeks to promote the optimum quality and supply of apartments for a range of needs and aspirations, including households with children, in attractive sustainable mixed income, mixed use neighbourhoods supported by appropriate social and other infrastructure.
- 5.3.9. Development management standards are in Chapter 16.
- 5.3.10. According to section 16.7 the area in which the site is located is designated as 'low rise – inner city' in which a twenty-four metres height is the maximum indicated for residential development. the heights

6.0 The Appeals

- 6.1. Appeals were lodged by the following three third parties.

Garden Terrace Residents Assoc.
Geraldine Hall and Ciaran Rogers
Caroline Butler.

6.1.1. Garden Residents Association.

An appeal was lodged by Paul Mullin on behalf of the Appellant on 10th March, 2021 Attached are photographs. The objections are outlined below:

Overshadowing of gardens and obstruction of daylight to accommodation

- Overshadowing and obstruction of daylight to interiors and overshadowing of external amenity spaces of properties on Garden Terrace, notwithstanding some shadow effect from the wall on the laneway. It is not agreed that increasing the height of the wall from three metres to a façade height of 10.6 metres (although setback) at the east and west end of the terrace does not cause dramatic overshadowing, loss of light. It is not in accordance with BRE standards and this is noted in the planning officer in his report.
- With regard to the Average Daylight Factor (ADF) a minimum of 2% not 1.5 % reduction would arise at Nos 1,3, 4 and 5 Garden Terrace with, at No 3 a reduction from 2.62 to 1.54% and at No 5 Garden Terrace a reduction from

3.47 to 1.74. Not all ground floor rooms are living rooms. If as stated on behalf of the applicant 5% is “well daylight day” space the reduction in ADFs is not acceptable.

- The sunlight and daylight analysis shows gardens to have significant loss of sun to the ground. (Fig 11) Many gardens receive up to 8 hours sunlight a day on 21st March but it is devastatingly reduced with some gardens sunless by the proposed development (Fig 12)
- Overshadowing is unacceptable with gardens in complete shade in March and September as opposed to the sunlight enjoyed at present. Nos 5, 6 and 7, even in June have complete loss of evening sun which is detrimental in impact.

Widening of the lane

- Destruction of the boundary wall and widening of the lane is not acceptable. It is the only outdoor space for residents facing south and it was relatively private having an arch at the end. There is complete opposition to widening of the laneway which may exacerbate anti-social behaviour. The planning officer did not adequately consider the needs of the residents.
- Although overshadowing impact was acknowledged. It is not accepted that the additional usable amenity space in the widened laneway is a compensation as it is wrong to compare private gardens with an amenity on a public laneway. An additional 3.5 metres in the gardens to open up the space the development with the unlocked gate reinstated would provide privacy and residents' cycle parking.
- Construction stage impacts such as piling and ground works may damage, the Garden Terrace properties in terms of structural stability. Pre and post condition surveys are essential prior to commencement of work.
- The ownership of the demolished and reconstructed wall on Clanbrassil street as part of the construction stage does not have consent. Ownership is not confirmed and it is not known if reconstruction will be satisfactory.

Traffic.

- The southbound lane towards Harold's Cross at the junction of Orr's Terrace is heavily trafficked as is Harold's Cross Road. New sightlines will reduce the wall width but vehicles should not be permitted to turn right off Orr's Terrace onto the northbound lane as there is zero visibility of oncoming traffic unless the two south bound lanes are blocked. The increase in traffic to the proposed development will increase traffic hazard due to the new layout. The junction at Emmet Bridge if the lane is blocked will be more congested and hazardous. Section 16.10.10 of the CDP requests safe access and egress for infill housing

6.1.2. **Appeal by Caroline Butler.**

An appeal was lodged by Caroline Butler of No 48 Longwood Avenue on her own behalf on 18th March, 2021 according to which:

- The structures on the east side of the lane at the east side the site is part of the properties on Longwood Avenue.
- The residents of Longwood Avenue have rights of access over this lane at the rear of Longwood Avenue, Orr's Terrace and O'Reilly's Cottages and these lanes are outside of the application site. Photographs and a copy of an OS map showing the location of a garage at the rear of Ms Butler's property are provided
- The use of the lanes during construction and operational stage stags for access arrangements will create traffic hazard and endanger public safety. This was a reason for the previous refusal of permission and permission should not be granted unless there are alternative access arrangements for both the construction and post construction stages which are acceptable to residents.
- It is not acceptable for the developer to be permitted to erect gates on Orr's Terrace. There would be conflict with construction traffic on the lane with vehicles exiting residents' properties to the rear onto the lane from at Nos 47-50 Longwood Avenue.

- Permission should not be granted unless a safety plan for construction traffic has been agreed and is in place and she is opposed to access to the site of the rear lane or O'Reilly's Cottages.
- A gate should be erected at the eastern end of Orr's Terrace with the lane confined to residents' use. The gate onto O'Reilly's cottages should be retained for existing users because the lane is private and amenity and safety should be safeguarded.
- It is implied in the application that existing gates would not be reinstated but it is essential that they are to protect the lanes from anti-social behaviour and significant pedestrian movement. No takeaway or off license should be permitted at the development if it is decided that open access along the laneways is to be permitted.
- Four storey development with a roof terrace and lift shaft is too high and creates undesirable precedent in an area which is mainly in two storey buildings. Obstruction of skylight including night sky and evening sunlight to and overlooking of rear facing windows and gardens on Longwood Avenue and Garden Terrace will occur. Overlooking from balconies and windows would be possible. Permission should be refused due to the height and impact of light pollution, overshadowing and overlooking.
- There are concerns about potential structural damage to the properties on Longwood Avenue which were not built on foundations and which were previously affected by vibration from piling works in the area. IT needs to be established whether the proposed works by investigative works as to whether structural damage would occur.

6.1.3. **Appeal by Geraldine Hall and Ciaran Rogers.**

An appeal was lodged by Geraldine Hall and Ciaran Rogers. of No 46 Longwood Avenue on her own behalf on 18th March, 2021. According to the appeal:

- The proposed development would contravene the zoning objective. Longwood Avenue's nineteenth century houses would be affected by overdevelopment with excessive scale and massing, loss of the open aspect

over low rise buildings and adverse impact on private amenity space. A four-storey building beside a nineteenth century terrace is not acceptable as it is incompatible with the established character and density. The proposal contravenes section 16.10.16 of the CDP on infill housing and section 16.10.18 of the CDP on development of back land sites.

- It contravenes section 16.10.18 with regard to mews dwelling which could be confined to two storeys with exceptions in certain circumstances. Although the proposal is not defined as a mews, mews development is the intention of the CDP for rear lanes and back lands. Also, with regard to the CDP, the proposal would not create a good urban neighbourhood because it does not facilitate a variety of groups of residents; sixty percent of the units are one-bedroom units with no parking provision including shared parking.
- The proposed development which, inclusive of the lift over run is 16.10 metres in height, is overbearing and visually intrusive in views from the rear of the properties of Longwood Avenue and it is incongruous and fails to integrate with existing development. It adversely affects the visual amenities of the street and residential amenities of properties in the area. A contextual section drawing should have been provided in the application.
- The proposed development is overdevelopment of a constrained site with apartment built to the east boundary with a terrace that has no setback of buffer to the lane at the rear of Longwood Avenue. There are several windows up and balconies up to second and third floor levels which overlook the Longwood Terrace houses and external amenity spaces which is contrary to the CDP. The balconies and windows are four metres from the boundary. The design statement states the distance between first floor windows are over twenty-two metres at first floor level.
- The design statement is erroneous in stating the blocks around a public laneway with existing light industrial workshops adjoin the rear gardens forming a buffer zone. There is no buffer zone with just walls and doors separating the properties from the lane and there is just one metal workshop.
- The daylight and sunlight analysis are insufficient because it relies on March 21st as a reference date with results in a single table and it is not clear if it is

compliant with BRE criteria. A full BRE assessment should be required given the height, mass and form and orientation relative to the sun's path. The laneway will be overshadowed with the proposed development having overbearing impact and there will be loss of sunlight and daylight on primary external amenity spaces at the Longwood Avenue properties. This contravenes the CDP.

- The applicant has claimed a right of way over the lane at the rear of Longwood Avenue but it is not clear if a right of way exists. The proposed development would be reliant on the lane for access and turning as shown on the auto track drawings by fire/ambulance/deliveries and refuse vehicles. It is not appropriate for a private 3.87 metres' wide lane outside of the applicant's ownership and not in 'taken in charge' to be used for these purposes.
- It is not clear to the extent to which there is open access for pedestrians and vehicles on completion of the development and as to whether security and other risks have been taken into consideration. There are pedestrian and vehicular rights of way over the 3.87 metres wide private laneway to the rear of Longwood Avenue. It is not in the public realm and is a private laneway, with residents having control over the gates, (contrary to the design statement), over Orr's Terrace and O'Reilly's Cottages lanes. It is not clear, with reference to the application and planning officer report that significant traffic and vehicular and pedestrian safety use over the three lanes would not arise during and post construction.

6.2. Applicant Response

6.2.1. A submission was received from the applicant's agent on 7th April, 2021, the contents of which are outlined below:-

- A previous proposal was subject to appeal. (PL 306311 refers.) It showed proposals for a 2-6 storey development and an alternative option. The alternative option was not considered by the inspector, who considered the 2-6 storey proposal acceptable. The Board decided to refuse permission but did not indicate whether it had considered the alternative proposal.

- There are detailed observations in the planning officer report on the need for change as indicated in national and regional policy and statutory guidelines.
- The current proposal incorporates some community gain and the draft Dublin City Development Plan, 2022-2028 (Draft CDP) has been taken into consideration. Relative to the previous proposal, the number of units is reduced and the height is reduced to three to four storeys. A setback from the boundary with Garden Terrace is introduced as the laneway is widened and walls are removed. (It will be replaced by wall and railings.). The layout ensures adequate sunlight and daylight to the proposed development.
- The Draft CDP supports the sequential approach and follows the vision for growth (growth strategy) and policy of consolidation of residential and employment and intensification of infill brownfield and underutilised lands on strategic transport corridors. in the Dublin Metropolitan Area Strategic Plan. (MASP) The draft CDP strategy aligns with this and sets out key locations for development with appropriate land use mix with locations identified for increased height subject to appropriate criteria and qualitative standards. Well-designed future and sustainable residential development at right locations and densities are to be provided. lifetime adaptable infill and brownfield development
- Reference is made to the Building Height Guidelines, (which were updated in 2020) which seek to and advocates provision for significant increases in density and heights – to six storeys at street level within the Canal Ring. CDPs cannot impose blanket height restrictions. Locations for increased height should be identified, as appropriate to include brownfield sites old industrial sites areas.
- The planning officer notes the differences and the differences to the established character in that the area is in a process of change in scale and density of development.
- The planning officer advised that permission should be granted having made several observations including the following:

The proposal conforms to the national and local policy and strategic guidance There is no abrupt transition in scale.

The block steps up from three storeys where it adjoins the two storey houses on Garden Terraces to a maximum four storey height at the centre of the site. The U-shaped form responds to the immediate context.

The diminution in amenity, due to overshadowing at Garden Terrace is acknowledged but the location is in the city centre, there is a strategy for higher density on brownfield sites.

The ADF for the interiors of the Garden Terrace buildings meet minimum standards. Direct sunlight would reach the front gardens at various points through daytime in summer. The widening of the lane in front of the gardens provides additional amenity space.

- With regard to the appeal by Garden Terrace Residents Association:-

The residents were consulted by the design team and some community gain is incorporated in the proposal. A denser form of development is required by national, regional and local policy with the CDP review providing for a more compact dense permeable and sustainable city.

The scale and height accord with national, regional and local policy for the inner canal ring, there is no abrupt transition and several buildings of similar height are in the Clanbrassil Street area. The proposed development is compatible in design scale and has a high-quality design and selection of materials for the facade with appropriate breakdowns in the massing of elevations in particular at the perimeter where there is also little fenestration.

The sunlight and daylight shadow impact analysis is based on a three-dimensional computer scale model of the site and context to demonstrate the current situation and to model the levels of shadow that would be cast and daylight that would be altered by the proposed development.

For the houses on Garden Terrace, to the north it is demonstrated that the internal space continues to receive adequate daylight post development in full compliance with BRE standards using the metric for

Average Daylight Factor (ADF.). ADP is the most detailed level of analysis factoring into account the Vertical Sky Component (VSC) Daylight Distribution (DD) and actual extents of the internal rooms.

In addition, the analysis also provided an assessment for the public lane at Garden Terrace and the front gardens and entrance hrs that are visible from the lane at full private amenity area sunlight standards.

The existing lane (at circa 2.5 m wide) has low levels of sunlight as it is significantly overshadowed by the 3.3 m high wall which is topped by foliage over a discussed commercial structures forming the northern boundary.

6.3. **Planning Authority Response**

There is no submission on file from the planning authority.

6.4. **Observations**

6.4.1. Observer submissions were lodged by the following five parties.

Longwood Avenue Residents Assoc.

Philip O'Reilly

Melissa Murray

Paola Mereu

Karin Hand and Francis Curran

6.4.2. **Longwood Avenue Residents Association.**

The appeal of the Garden Terrace Residents Association is supported in the submission lodged on 18th March, 2021. It includes copies of and references to a detailed observer submission lodged at application stage with illustrations, photographs and diagrams which it is contended illustrates the case made by Longwood Avenue Residents Association: In brief, the association's objections are:

- The proposed development is overdevelopment. It is of unacceptable height, mass and to cause visual intrusiveness, overlooking, overshadowing and adverse impact on the amenities of the rear gardens of their properties.

Reference is also made to the previous unsuccessful application under P.A.

Reg. Ref. 3955/19 and the concurrent application under P. A. Reg. Ref. 3619/20.

- The application does not indicate the full extent of the overshadowing impact and some details are omitted from drawings. As the sun at no date rises over 60 degrees the front gardens at the east end of Garden Terrace receives no sunlight on 21st June. The front gardens at western end are in shadow at midday except between late May and early July. The shadow drawings are also inaccurate in that the position and shape of gardens are not as shown in diagram in the applicant submission. There are anomalies in the shadow study so there is doubt as to implications for understanding of the overshadowing impact.
- The gardens which are diverse in layout, planting and use are integral to the homes of residents and they will be overlooked from the proposed development in addition the block having an overbearing impact. These are important and significant issues for residents.

6.4.3. **Philip O'Reilly**

A submission was received from Mr. O'Reilly on 26th March, 2021 according to which:

- New investment is needed in the area but development should be sensitive to the established character, scale and setting. The area in which there are two and three storey protected structures, narrow streets, back lanes and low-profile houses is of significant architectural and historical merit.
- Three storey development on the street frontage may be acceptable but the current proposal should be scaled down.
- Development which is overwhelming is not acceptable and is contrary to the zoning objective. For example, special consideration must be given to impact on residents of single storey cottages with no gardens.

6.4.4. **Melissa Murray**

A submission was received from Ms Murray who resides at No 48 Longwood Avenue on 14th April, 2021 according to which:

- She objects to the proposed height and requests that it be reduced.

- There is potential for precedent for similar four storey development in the area.
- There will be significant overlooking and overshadowing. Included are three photographs to demonstrate the overshadowing impact on Ms Murray's property, internally and within her garden. Overshadowing impact is worse than it is indicated to be in the planning officer's report.
- While there is no objection to the development of the site in principle but the density is excessive and is not such that it would lead to creation of and integration into the community in that apartments led to transience.
- Use of the laneways especially the lane at the rear of Longwood Avenue for access and for turning by traffic associated with the proposed development is unacceptable. It would be hazardous in that it would cause conflict with pedestrian and vehicular movement, and for residents exiting garages at the rear of their properties.

6.4.5. Paola Mereu

A submission was received from Ms Mereu who resides at No 50 Longwood Avenue and according to her submission:

- The proposed layout is not functional and the density is excessive.
- Apartments will be occupied on short terms basis only and this disrupts community spirit.
- The proposed development (Block 1 in particular) will completely overshadow the rear of Ms Mereu's property which is already affected by a garage
- Block 1 will be overbearing and is too close to the existing properties.
- Block 1 will overlook and interfere with the privacy of the adjoining properties.
- The size, design and form are incompatible with the existing character of development resulting in negative visual impact.
- The increase in levels of traffic and the lack of parking in the area along with the needs for access for vehicles including emergency services and visitors have not been addressed. There will be hazardous and safety considerations.

- There will construction stage impacts such as damage due to vibration from piling works and roadblocks and restrictions on access and there will be increases in noise and pollution.

6.4.6. **Karen Hand and Francis Curran**

6.4.7. Ms Hand and Mr Curran reside at No 42 Longwood Avenue and according to their submission:

- The access to the laneways will cause risks to traffic and pedestrian safety and adverse impact on amenity. The claim to the right of way over the lane to the rear of Longwood Avenue is disputed. It should not be used for emergency and services traffic by the applicant but it is to be used by the existing residents.
- There would be increased traffic generation and demand for parking in an already over congested area and this is in contravention of the zoning objective.
- The design is incompatible with the established character and spatial relationship of the surrounding buildings which should be respected.
- The proposed development, due to excessive height will reduce sunlight access to the garden and house at No 42 Longwood Avenue. The submitted sunlight and daylight and shadow assessment is insufficient in that it was only applied for 21st March. It is lacking important information. The laneway would also be overshadowed.

7.0 **Assessment**

7.1. The current application is a revised proposal, (submitted to the planning authority following consultations) in which that applicant seeks to overcome the reasons for refusal of permission for the prior unsuccessful proposal for a six-storey mixed use development under P. A. Reg. Ref.3955/19/ PL 306031. There are three appeals and five observer submissions in which objections relating to several issues are raised.

- 7.1.1. It is noted that some of the third parties confirm their support in principle for redevelopment of the site but they have several objections to the current proposal.
- 7.1.2. The issues considered central to the determination to the decision having regard to the appeals and observer submissions are considered below under the following subheadings: -

Development in Principle.

Height, Mass, Scale and Design – Visual Amenities of the Area

Impact on the Amenities of the Garden Terrace Properties.

Impact on the Amenities of Longwood Avenue Properties.

Construction Stage Management.

Access and Parking - Operational Stage.

Environmental impact assessment screening

Appropriate assessment screening.

7.2. **Development in Principle.**

- 7.2.1. In principle, having regard in particular to the site formation from vacant and underutilised brownfield lands within the Canal Ring, the proposed development is consistent with the delivery of national strategic policy and development plan policies for sustainable redevelopment and regeneration. In this regard higher density residential development subject to qualitative standards with regard to the future development and its occupancy in combination with the restaurant/commercial elements at ground level along the street frontage and compatibility in relation to surrounding development, services and infrastructure is to be encouraged.
- 7.2.2. The twenty-eight units, in two blocks, although at a high density of circa 245 units per hectare are in an appropriate mix of one and two bed units in a variety of types, one third of which are dual aspect and all of which are in excess of minimum standards in internal accommodation, layout and size, daylight and sunlight to interiors and private/communal open space provision having regard to *Sustainable Urban Housing Design Standards for New Apartments – Guidelines for Planning Authorities*. Residents can benefit from the amenities of the internal courtyard (145 square metres) and the roof garden space (180 square metres for Block 2).

7.2.3. The proposed restaurant use, over the ground and first floors within No 39 Upper Clanbrassil Street, the front section of which is to be retained is appropriate, the now vacant building formerly having been in use as a takeaway restaurant. Further clarification of details such as to the nature of the restaurant use and hours of operation and the retail unit would be desirable, given the proposed residential use and surrounding residential development. It is considered that these matters can be addressed by compliance with a condition, similar to that attached to the planning authority decision to grant permission.

7.3. Height, Mass, Scale and Design – Visual Amenities of the Area.

7.3.1. As stated by the planning officer in his report the current proposal, Block 2 the larger block enclosing the courtyard is, stepped up from three to four storeys toward the southern of the site with setbacks at the site frontage. It, along with the smaller block to the rear of No 39 Upper Clanbrassil Street with the four own door units and roof garden are considered appropriate for the site location in form, height, and in its contemporary design and compatible with the mix of surrounding development. The selection of materials and finishes, involving a dark sand coloured finish for the facades onto Clanbrassil Street is positive for the streetscape context and presentation onto the three lanes surrounding and bisecting the site. The finalisation of details for the shopfronts and signage for the retail unit and restaurant to be located, over two floors within No 39 Upper Clanbrassil Street the original front section of which is to be retained are considered appropriate.

7.3.2. The area has been subject to extensive regeneration and redevelopment comprising apartment and mixed used blocks mainly, are integrated with historic buildings and streetscapes dating from the eighteenth and nineteenth and twentieth centuries. As a result, there has been major evolving change in the character of the area's built environment.

7.4. Impact on the Amenities of the Garden Terrace Properties.

7.4.1. Garden Terrace is a row of single storey terraced cottages with gardens to the front and access from a pedestrian lane extending from Clanbrassil Street Upper to a gate pedestrian entrance with access to an apartment development which adjoins the lane at the rear of Longwood Terrace. On the southern side of the pedestrian lane is a rubblestone wall over which there is a range of vegetation enclosing the application

site. The end cottage on Garden Terrace at the corner of Upper Clanbrassil Street is in use as a café whereas the other units are in residential use. The objections are as to overbearing impact, overshadowing, and overlooking and the nature of the proposals for widening of the lane increasing amenity space.

- 7.4.2. Having reviewed the daylight and sunlight study submitted with the application, the methodology for which is considered to be sufficient and consistent with the recommendations in the BRE guidance, particularly with regard to the application of the spring equinox. It is established in the study that while there is some reduction in average daylight factor (ADF) the minimum standards requirements recommended are exceeded for the properties which will also receive sunlight throughout the day during summer. As discussed in the applicant's submissions and the planning officer report, there is reasonable balance in this regard in providing for quality development on the brownfield inner city site and, the impact on the Garden Terrace properties in that minimum standards with regards to access to daylight and sunlight are exceeded.
- 7.4.3. With regard to the contentions by third parties as to overbearing impact, the proposed development results in a radical change to the immediate environment and aspect and outlook to the south from the Garden Terrace properties. The properties will benefit from a more open aspect due to the setback and widening of the laneway incorporated in the footprint for Block 2 than that which exists by virtue of facing southwards towards the rubblestone wall. The footprint's setback, the three-storey height to 10.5 metres and the third-floor setback of four metres provide for a reasonable form, height for the inner-city location. The north facing façade rhythm, combination of materials finishes and glazing offer an outlook of interest.
- 7.4.4. The third-party objections and preference for retention of the status quo with regard to the pedestrian lane are noted but it is considered that the applicant in the current proposal has provided a satisfactory solution with regard to the transition between the Garden Terraces cottages and the proposed development. It is therefore considered that the proposed development would not seriously injure the amenities of the Garden Terrace properties.
- 7.4.5. As stated in the third-party submissions, the principle private open space for these small dwellings is the south facing front gardens which at present are subject to

considerably overshadowing from the limestone wall on the opposite side of the pedestrian lane.

- 7.4.6. It is considered that any potential for overlooking towards the properties on Garden Terrace has been mitigated in the development through the use of obscure glazing for the north elevation windows. In addition, the arrangements for opening windows can be confined to pivot top hung only or similar so as to eliminate all potential for overlooking.

7.5. Impact on the Amenities of Longwood Avenue Properties.

- 7.5.1. The footprint of the proposed blocks is at a minimum of fifteen metres distance from the rear building lines of the houses, (exclusive of outbuildings, additions and returns) on Longwood Avenue and a minimum of 2.5-2.7 metres approximately from the rear boundaries or frontage of the sheds, garages, and stores at the bottom of the rear gardens which open onto the laneway between these properties and the application site. Further to review and consideration of the proposed development's footprints, form, heights which incorporate setbacks for Block 2, it is considered that the proposed development would not have an overbearing impact or result in an outlook from the rear of the properties that would seriously injure the residential amenities or value of these properties.
- 7.5.2. The proposed development is to be positioned to the west and north-west of the Longwood properties. However, having regard to the height and form of the development and the position relative to these properties, it is considered that the proposed development would not give rise to any undue degree of overshadowing that would warrant assessment by way of a daylight and sunlight analysis.
- 7.5.3. However, undoubtedly, the construction stage of the development would result in noise and nuisance affecting the amenities of these properties and is to be expected during this period. However, a reasonable balance should be achieved in this regard, given the inner-city area in particular subject to preparation of to a comprehensive construction management plan, to be prepared following appointment of a contractor and subsequent adherence to its requirements.

7.6. Construction Stage Management.

- 7.6.1. The outline construction management plan includes sufficient details for construction traffic management, the access being from Clanbrassil Street and along Orr's

Terrace with the haul route to be determined and detailed in the comprehensive construction management plan.

- 7.6.2. There is a full undertaking by the applicant to ensure maintenance of access along the lane at the rear of Longwood Avenue properties onto the frontage of which there are garages, sheds including small businesses and to unobstructed access to Clanbrassil Street along O'Reilly's Cottages to the south side of No 39 Upper Clanbrassil Street.
- 7.6.3. The dispute over the status of this lane and the rights of access over it is a matter for resolution through the legal system. The applicant has provided swept path analysis drawings to demonstrate the lane's capacity to accommodate vehicular access during the construction stage. There is no evidence available in connection with the application, appeals and the observer submissions as to confirmation of the status of the lane with regard to ownership or rights of access, and consequent issues with regard to construction stage access. In the event that it is demonstrated and confirmed that access along the lane to the rear of the Longwood Avenue properties is not possible, it would be necessary for alternative arrangements for the implementation of the development without encroachment on or access over this lane to be investigated with full details provided in the comprehensive construction management plan.
- 7.6.4. Similarly, the entitlement to erect and retain locked gates on O'Reilly's Cottages and possible future gated access along this lane post construction which are a matter of dispute between parties may require resolution through the legal process. It appears, having regard to the Transportation Division's report that these lanes are under the control of the local authority.
- 7.6.5. With regard to the concerns as to risk to the structural stability of the properties on Garden Terrace and Longwood Avenue, it is of note that no deep excavation works are required for the development of the subject brownfield site further to demolition and site clearance. As such no special concerns should arise and it is reasonable that no additional protective measures other than details of methodology and standard monitoring of vibration etc for the piling works which should be provided for within the comprehensive Construction management plan. An undertaking is given

in the Outline Construction Management Plan to appointment of a monitoring subcontractor.

7.7. Overall, the details in the outline construction management plan are considered sufficient to facilitate consideration for the application, subject to a condition being attached with a requirement for a comprehensive construction management plan to be prepared following appointment of a contractor which would be subject to the written agreement of the planning authority prior to commencement of development.

7.8. Access and Parking - Operational Stage.

7.8.1. There is a zero-parking proposal for the development, and the applicant has included a mobility management /residential travel plan in the application. These proposals are considered reasonable and instrumental in discouragement of private car travel within the city and, encouragement of use of alternative modes of transport in the interest of sustainable development and supported in the CDP. Given the site location the zero-parking provision is acceptable and it is noted that cycle parking facilities are included in the proposal.

7.8.2. Orr's Terrace, which is at present gated, is the proposed access route for services and emergency vehicles access. It has been demonstrated to the satisfaction of the Transportation Planning Division in the further information submission though the revised swept path drawing and supplementary details that proposed widening works providing for access and a 45-degree visibility splay at the junction with Clanbrassil Street Upper. It is agreed that the shortfall, (of the 49 degrees visibility splay recommended in DMURS) can be accepted given the improvements having regard to the limited site configuration, and limited traffic movements onto and off Clanbrassil Street Upper that would be involved.

7.8.3. There is no objection proposed arrangements for refuse services (with collection and return of bins from the development for loading to the trucks on Clanbrassil Street) as is acceptable to the planning authority.

7.8.4. Pedestrian priority across Orr's Terrace on Clanbrassil Street is provided for to the satisfaction of the Transportation Planning Division with the inclusion of tactile paving along with road markings. Convenience and safety for pedestrian circulation along the lane, to and from the apartments is provided for in surface materials and the recesses for the entrances and are provided in the surfacing and recessed spaces at

entrances. The proposed arrangements having regard to traffic and parking, at operational stage are considered satisfactory.

7.9. Environmental Impact Assessment Screening.

7.9.1. Having regard to the nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.10. Appropriate Assessment.

7.10.1. The application is accompanied by a screening statement for Appropriate Assessment in which it is stated that the nearest European sites are the South Dublin Bay SAC and South Dublin Bay and River Tolka SPA and it has been consulted. It is concluded in the statement that no impacts attributable to the project on its own or in combination with other plans and projects are anticipated.

7.10.2. Having regard to the scale and nature of the proposed development and to the serviced inner suburban location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. In view of the foregoing, it is recommended that the planning authority decision be upheld and permission granted based on the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the Dublin City Development Plan, 2016-2022 according to which the site is within an area subject to the zoning objective Z1: "*To protect provide and improve residential amenities*", to the location within the central city area, to the configuration of the site and, to the established pattern and character and range and nature of use of the existing development in the surrounding area, it is considered that subject to compliance with the conditions below the proposed development would not seriously injure the visual amenities and character of the surrounding

historic built environment or the residential amenities of the single storey cottages along Garden Terrace to the north, or the properties on Longwood Avenue to the east in overbearing impact, overshadowing or overlooking, would be acceptable in terms of traffic and public safety and convenience and, would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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

Reason: In the interest of clarity.

2. Prior to the commencement of the development, the applicant shall submit and agree in writing with the planning authority, full details as to the proposed retail and restaurant/takeaway uses at ground floor level in Block B and at ground and first floor level at No 39 Upper Clanbrassil Street in the proposed development to include measure for control and management of noise, emissions and supplies and waste storage, hours of operation and signage.

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

3. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with, "*Best Practice Guidelines on the Preparation of Waste Management*

Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

4. Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

5. Details of materials, colours and textures of all external finishes which shall include the provision of samples for the proposed new roof shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

6. The applicant shall obtain water and waste-water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

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

Reason: In the interest of public health.

8. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

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

9. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 (as amended), no additional development shall take place above roof level, including lift motors, air handling equipment, storage tanks, ducts or other external plant or the erection of telecommunications equipment other than those already shown on the drawings submitted with the application, unless authorised by a prior grant of planning permission.

Reason In the interest of clarity and visual amenity.

10. Details of the proposed signage, size, materials, method of illumination if any proposed, shall be submitted to the planning authority for their written agreement prior to commencement of development, any additional signage shall be the subject of a separate planning application.

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

11. Prior to the commencement of the development, fully detailed Servicing Management Plan shall be submitted to and agreed in writing with the planning authority. The implementation of the measures provided for in the plan shall be managed, monitored and reviewed by the operator of the development.

Reason: In the interest of pedestrian and vehicular safety and convenience.

12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

This plan shall provide details of intended construction practice for the development, including details of:

Location of the site and materials compound.

Location of areas for construction site offices and staff facilities.

Site security fencing and hoardings.

Timing and routing of construction traffic to and from the construction site and associated directional signage.

Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network.

Mitigation measures for noise, dust and vibration, and monitoring of such levels.

Containment of all construction-related fuel and oil and, arrangements for storage and removal of construction and demolition waste and measures for management of surface water run-off.

Arrangements to ensure that during the construction and demolition phases, works are in accordance the standards in, British Standard 5228 *'Noise Control on Construction and Open Sites, Part 1. Code of practice for basic information and procedures for noise control.'*

Arrangements for management of demolition and construction stage impacts on pedestrian facilities and circulation.

A monitoring system and record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of orderly development, public amenity and safety, and the proper planning and sustainable development of the area.

13. The Developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development

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

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

Jane Dennehy

Senior Planning Inspector

19th July, 2021.