



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309738-21

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<b>Development</b>	Demolition of all buildings on site. Construction of a mixed-use development arranged in two blocks across 6-8 storeys. 74 apartments. Removal of the bridge and replacement with a new footbridge. New public access route.
<b>Location</b>	40, Old Kilmainham Road, Dublin 8
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	3973/20
<b>Applicant(s)</b>	Bartra Property Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Bartra Property Limited
<b>Observer(s)</b>	Michael Moran Camac Way Management Company Cllr Marie Devine

Save Kilmainham Mill Campaign  
Group

Jean Munnane & Aaron Groom, 6  
Millbrook Terrace

Jennifer Rylands

Aidan and Susan Waterstone

**Date of Site Inspection**

23<sup>rd</sup> September 2021

**Inspector**

Colin McBride

## 1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.212 hectares, is located in Kilmainham to the west of the city centre. The appeal site is located on the northern side of Old Kilmainham and is currently occupied by a number of vacant commercial structures (warehousing/sheds). The southern boundary of the site is defined by the public road with the northern boundary defined by the River Camac, which runs west to east along the northern boundary. There is an existing bridge over the river onto the site from Rowserstown Lane. The site to the east is occupied by similar commercial development including a car rental business. To the west are a number of existing dwellings including dormer style dwellings fronting the public road and adjacent the south western corner of the site. A number of dwellings (mixture of single-storey and dormer style dwellings back onto the western boundary and front onto Lady's Lane. The single-storey dwellings off Millbrook Lane are also located to the west of the site and adjacent the north western corner. To the north of the site are dwellings fronting Rowserstown Lane that back onto the river (two-storey dwellings). To the northwest of the site and on the opposite side of the river is Kilmainham Mills, which is a protected structure.

## 2.0 Proposed Development

2.1. Permission is sought for demolition of all existing commercial buildings on site including former car showroom, garage, warehouse and offices (c.1,095sqm), construction of a mixed-use development arranged in two blocks across 6-8 storeys comprising the following; 1 no. ground floor commercial unit fronting Old Kimainham (c.170sqm) and 74 no apartments consisting of 35 no. 1 bed units, 38 no. 2 bed units and 1 no. 3 bed units ranging in size from c.46sqm to c.102sqm, north, south, east and west facing balconies throughout, ancillary and plant areas at ground floor level including bin and bicycle storage, switch rooms, generator, water tank storage and ESB substation, circulation areas throughout and stair/lift cores in Block A and B, associated plant and photovoltaic panels at roof level. The total floor area of the proposal is c.6,235sqm. The proposal also entails removal of the existing bridge and replacement with a new footbridge over the River Camac, a new public access route serving pedestrians and cyclists connecting Old Kilmainham to the south of

Rowserstown Lane to the north via the new bridge, vehicular access serving delivery, service and emergency vehicles from Old Kilmainham Road, improvements and widening of the public footpath along Old Kilmainham Road, all associated site development works, services provision, drainage works, diversion of the existing combined sewer, public and communal open space and landscaping and boundary treatment works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission refused based on 8 reasons...

1. Having regard to the Z6 land use zoning objective for the application site and that immediately adjacent to the east, 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation', to the limited extent of employment generating floor space proposed and the significant constraint to the future development potential of the adjoining site which would arise from the scale and layout of the proposed blocks, the proposed development would be contrary to the zoning objective of the site and, therefore, to the proper planning and sustainable development of the area.

2. Having regard to Appendix 3 of Volume 7 of the City Development Plan 2016-2022, Site 17. Lower Camac: South Circular Road to Liffey Estuary and the location of the site partially in Flood Zone B and which is undefended, it is considered that a development of this scale on this site is premature pending the outcome of the Camac River Flood Alleviation Scheme, which is currently at preliminary design stage. The proposed development in an area which is at risk of flooding and would be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposed development, having regard to its excessive height, form and massing in proportion to surrounding structures, feature and streetscape, would constitute overdevelopment, which would be visually overbearing, obtrusive and would seriously injure the character of the local area and

setting of nearby protected structures, particularly Killmainham Mills, would set a precedent for further similar development and would be contrary to the proper planning and sustainable development of the area.

4. The proposed development, by virtue of: the inclusion of north-facing single aspect units; non-provision of additional floor area to units; lack of natural surveillance to residential entrances and open spaces, would provide a poor standard of residential accommodation for future occupiers. The proposed development would therefore be contrary to the provisions of the Guidelines on Sustainable Urban Housing: Design Standards for New Apartments (2018), the provision of Chapter 16 of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

5. Having regard to the scale, mass and form of the proposal it is considered that the proposed development would seriously injure the residential amenities of adjoining properties to the west in Lady's Lane and Millbrook Terrace and 41 Old Kilmainham Road and to the north and north east of Rowserstown Lane, by reason of overbearing impact, overlooking and overshadowing of private open space. As a result, the proposed development would be contrary to the proper planning and sustainable development of the area.

6. The proposed is located on a heavily trafficked road which is a Quality Bus Corridor and planning Bus Connects route and in an area where there is limited on street loading bay and car parking available. The service access proposals are considered inadequate to facilitate the development, and no drop-off provision within the site is proposed. Lack of car parking provision including resident, accessible and visitor and car share parking within the site is proposed. As a result the development would generate overspill parking and servicing activity onto the adjacent Old Kilmainham Road and footpaths thereby causing obstruction to pedestrians, bus operations and road users. The development is considered contrary to the Dublin City Development Plan Section 16.38 and the Design Standards for New Apartments, Section 4.23, and would endanger public safety by reason of traffic

hazard. The development would therefore be contrary to the proper planning and sustainable development of the area, and would set an undesirable precedent from similar developments in the area.

7. The existing bridge over the River Camac, located within the site, is considered to be of potential historical and archaeological significance, contributing to the understanding of the built heritage of the city and the local area. It is considered that it has not been satisfactorily demonstrated that the proposed demolition of the existing bridge would not be contrary to the Dublin City Development Plan, 2016-2022, in which according to section 16.10.17 the retention and reuse of historic buildings not included on the record of protected structures is encouraged, and Policy Objective CHC1 which provide for the preservation of built heritage making positive contributions to the character and appearance of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

8. Having regard to the location of the site within a Zone of Archaeological Constraint for Recorded Monument DU018-020 (Dublin City) and within the Zone of Archaeological Interest of the Dublin City Development Plan 2016-2022, and to the lack of an Archaeological Assessment submitted in support of the application, it has not been demonstrated that the proposed development would be acceptable in terms of archaeological impact, contrary to Policy CHC9 of the Dublin City development Plan 2016-2022 and to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Planning Report (19/02/21): The proposal was considered to be contrary to zoning policy, inappropriate in design and scale relative to adjoining properties, unsatisfactory in terms of traffic impact, provide for an insufficient quality of residential development, premature pending flood alleviation measures, provide insufficient justification for

demolition of the existing bridge, have potential to impact archaeological significant of the area. Refusal was recommended based on the reasons outlined above.

### 3.2.2. Other Technical Reports

Irish Water (25/01/21): No objection.

Parks and Landscape (03/02/21): Further information including submission of invasive species management plan, a construction environmental management plan and a revised landscape plan.

City Archaeologist (09/02/21): Further information including a detail Archaeological Assessment, proposal for retention and repair of existing bridge, reduction in height to negate impact on Kilmainham Mill and reconsidering of external finishes in this regard.

Drainage Division (09/02/21): Refusal recommended for failure to demonstrate compliance with Development Plan policies G15 and G16, provision of significant additional population into a floodplain area and premature pending the outcome of flood alleviation scheme.

Transportation Planning (12/02/21): Refusal recommended due to inadequate parking provision. Lack of set down loading and potential for interference with traffic movements along Old Kilmainham Road. The proposal was considered contrary to Section 16.38 of the Design Standards for New Apartments.

Conservation Office (15/02/21): Concerns expressed regarding overall height, scale and visual impact in the context of existing structures and the demolition of the existing bridge, which is of architectural heritage significance.

EHO (17/02/21): Insufficient information including a construction management plan to mitigate the impact of noise and air pollution.

### 3.3. Prescribed Bodies

An Taisce (01/02/21): Impact on an area of historical significance, demolition of existing bridge which is of architectural heritage value.

### 3.4. Third Party Observations

3.4.1 31 no. submissions were received. The issues raised can be summarised as follows...

- Inappropriate design and scale, out of character at this location.
- Inappropriate density and scale contrary development Plan standards.
- Lack of car parking/traffic impact.
- Loss of sunlight and daylight to adjoining properties overlooking/loss of privacy.
- Light pollution.
- Flood risk.
- Impact on architectural heritage including inappropriate demolition of existing bridge and scale of development relative to the area and Kilmainham Mill.
- Nature of units would provide for transient population.
- Lack of ecological impact assessment.
- Rights of access issues.

## 4.0 Planning History

5796/07x1: Extension of duration of permission granted.

PL29S.229884 (5796/07): Permission granted to demolish existing on-site structures, erect mixed development comprising 18 apartments, 5 live work units, enterprise and employment space and all ancillary site works.

1033/05: Permission refused for demolition of existing structures and construction a mixed use development consisting of 1 no. retail unit, 6 no. live work units and 38 no. apartments.



Refused on the basis non-compliance with zoning (quantum of employment uses) and scale, massing and injurious to visual amenities and adjoining residential amenities.

On other sites, both located further to the east along Old Kilmainham

ABP-306814-20 (4623/19): Permission for demolition of the existing single storey building (1,100 sq.m) last used as a motor business and its replacement with the construction of a 6 storey over basement hotel.

Refused based on one reason...

1. Having regard to the location of the site in Flood Zone A, which is undefended, the Board is not satisfied, on the basis of the information lodged with the planning application and the appeal, that the development appropriately mitigates the risk of flooding on the site and the development would not give rise to a heightened risk of flooding either on the proposed development site itself, or on other lands. It is considered that a development of this scale on this site is premature pending the outcome of the Camac River Flood Alleviation Scheme.

ABP-300972 (3188/17): Permission granted for demolition of buildings & construction of a 26 no. unit apartment development in two blocks over basement car park, 5 and 4 storeys in height respectively with landscaped courtyard and associated site works.

## **5.0 Policy Context**

### **5.1. National Policy**

#### **5.1.1 Project Ireland 2040 - National Planning Framework**

The National Planning Framework was published in 2018. National Policy Objective 3(b) seeks to 'Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, with their existing built-up footprints'.

The following objectives are of note:

- National Policy Objective 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- National Planning Objective 13: In urban areas, planning and related standards, including, in particular, 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.
- National Policy Objective 27: Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.
- National Policy Objective 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

#### 5.1.2 Section 28 Ministerial Guidelines

The following list of Section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities (2018)

- Sustainable Urban Housing, Design Standards for New Apartments, (Updated) Guidelines for Planning Authorities (2020)
- Urban Development and Building Height Guidelines for Planning Authorities (December, 2018)
- Design Manual for Urban Roads and Streets (December 2013)
- Architectural Heritage Protection – Guidelines for Planning Authorities (2011)
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009) Regional Policy

## 5.2. Local Planning Policy

5.2.1 The relevant development plan is the Dublin City Development Plan 2016-2022. The appeal site is zoned Z6 with a stated objective ‘to provide for the creation and protection of enterprise and facilitate opportunities for employment creation’. It is “considered that Z6 lands constitute an important land bank for employment use in the city, which is strategically important to protect. The primary objective is to facilitate long-term economic development in the city region”. In relation to uses it required “to incorporate mixed uses in appropriate ratios. All such uses, including residential and retail, shall be subsidiary to employment-generating uses and shall not conflict with the primary aim of the Z6 land-use zoning to provide for the employment requirements of the city over the Development Plan period and beyond and shall not detract from existing centres”. Residential use is identified as being open-for-consideration in this zoning.

The site is located SDRA 7

Part of the site is located within a Conservation Area

- Chapter 5 Quality Housing

QH6: To encourage and foster the creation of attractive mixed-use sustainable neighbourhoods; QH7: sustainable urban densities; QH8: development of under-

utilised sites; QH13: adaptable and flexible homes; QH17: private-rented accommodation; QH18: high-quality apartments.

- Chapter 11 Built Heritage and Culture acknowledges that built heritage contributes significantly to the city's identity and richness and diversity of its urban fabric.

Relevant policy –

CHC4: To protect the special interest and character of all Dublin's Conservation Areas.

GI15: To protect, maintain, and enhance the natural and organic character of the watercourses in the city, including opening up to daylight where safe and feasible. The creation and/or enhancement of riparian buffer zones will be required where possible. It is the policy of Dublin City Council to maintain and enhance the safety of the public in its use and enjoyment of the many public parks, open spaces, waterways and linkages within the city, including the River Dodder between Ringsend and Orwell (Waldron's) bridge, and at the area known as Scully's Field between Clonskeagh and Milltown.

GI16: To protect and improve the unique natural character and ecological value of all rivers within and forming boundaries to the administrative area of Dublin City Council, in accordance with the Eastern River Basin District management plan

- Chapter 16 Development Management Standards

S.16.2.2.2 - Infill Development: it is particularly important that infill developments respect and enhance its context and is well integrated with its surroundings, ensuring a more coherent cityscape.

S.16.5 – Indicative Plot Ratio: 2.0. A higher plot ratio may be permitted in certain circumstances such as: Adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed; To facilitate comprehensive redevelopment in areas in need of urban renewal...

S.16.6 – Site Coverage: 80%. Higher site coverage may be permitted in certain circumstances such as: Adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed; To facilitate comprehensive redevelopment in areas in need of urban renewal...

S.16.7.2 - Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development (table 'Building Height in Dublin'; Map K). Donnybrook would be classified as outer city. The maximum height permissible for sites in proximity to rail hubs is 16m under the Development Plan.

S.16.10.3 - Residential Quality Standards – Apartments and Houses

S.16.23 - Shopping Centres

### 5.3. **Natural Heritage Designations**

South Dublin Bay and River Tolka Estuary SPA (004024), 5.45km from the site.

South Dublin Bay SAC (000210), 6.16km from the site.

North Bull Island SPA (004006), 8.49km from the site.

North Dublin Bay SAC (000206), 8.50km from the site.

Glenasmole Valley SAC (001209), 10km from the site.

Wicklow Mountains SAC (002122), 11.37km from the site.

Wicklow Mountains SPA (004040), 11.41km from the site.

Rye Water Valley/Carton SAC (001398), 12.46km from the site.

Baldoyle Bay SAC (000199), 13.08km from the site.

Baldoyle Bay SPA (004016), 13.45km from the site.

Howth Head SAC (000202), 14.24km from the site.

Rockabill to Dalkey Island SAC (003000), 14.37km from the site.

### 5.4. **EIA Screening**

5.4.1 The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the site as Z6, the availability of public sewerage and water supply, the absence of features of ecological importance within the site, the

nature of the adjoining land uses as housing/institutional/commercial uses and public roads I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal has been lodged by Bartra Property (Kilmainham) Limited. The grounds of appeal are as follows...

- There is an intention to rezone the site from Z6 to Z1. Section 14.8.6 of the Plan note that a range of uses including residential are open for consideration. In relation to employment use it is noted the existing commerce use has been vacant for a considerable time and the proposal will generate active commercial and residential use on site. The site is in close proximity to public transport infrastructure and there is precedent for similar development on other lands zoned Z6. The proposal would not impact the development potential of the adjoining site.
- A flood risk assessment included measures to defend the site against flood risk. The proposal provides for a 8-10m setback from the river with the existing setback being 7m and development on adjoining sites providing less setback in some cases. It is noted the existing bridge cause obstruction to the flow of the river and is to be removed and replaced with a steel footbridge. In relation to the flood alleviation scheme it is noted such could take up to 2 years and that such should not preclude development with the proposal including assessment for flood risk and mitigation measures to address such.
- In response to refusal reasons no.s 3 and 5 regarding overall scale and design, and amended design is suggested with removal of 2 units to Block B reducing height from 6-8 storeys to 5-8 storeys, removal of overhang of Block A losing 4 units and increased separation between the development and no. 41 Old Kilmainham, increased set back of Block A from the public road and reduction total floor area to 5,874sqm. Both plot ratio and site coverage of the revised proposal is in line with development Plan requirements, the proposal

is considered to be acceptable in terms of visual impact. An assessment of VSC and APSH is submitted in relation to adjoining properties. In relation to overlooking it is noted that permission was previously granted for a 4-5 storey development (229884) with no concern regarding overlooking.

- In relation to reason no. 4 it is noted the provision of apartments and their orientation is in compliance with the Apartment Guidelines with the level of single-aspect north facing units in line with the percentages allowed. The level of floor space provided in the apartments is in compliance with the recommendations of the Apartment Guidelines. The overall quality of the development is considered acceptable.
- In relation to refusal reason 6 amendments proposed provide for a designated drop-off zone for delivery/service vehicles, the proposal does not interfere the QBC or Bus Connects proposal. The proposal is satisfactory in relation pedestrian connection. The proposal is a car-free development, which is appropriate in an area that is central and accessible to public transport and such is in compliance with the recommendations of the apartment guidelines.
- In relation to refusal reason no. 7 the Conservation Officer did not recommend refusal. The applicant/appellant has submitted a Conservation Report in relation to the bridge and that its demolition is not justification for refusal. It is noted that the retention of the bridge has flood implications. It is noted that removal of the bridge was permitted previously under ref no. 229884 and that the existing bridge does contribute to architectural character if the area.
- An archaeological assessment was prepared previously and an additional statement is prepared refuting the refusal reason.
- The issue of Archaeological Assessment could be assessed by way of condition.

## 6.2. Planning Authority Response

### 6.2.1 No response.

### 6.3. Observations

#### 6.3.1 Observations have been received from the following...

Michael Moran, Bishops court Upper, Kill, Co. Kildare.

Camac Way Management Company

Cllr Marie Devine, 40 Old Kilmainham, Dublin 8.

Save Camac Mill Campaign Group

Jean Munnane & Aaron Groom, 6 Millbrook Terrace, Ladys' Lane, Old Kilmainham, Dublin 8.

Jennifer Rylands, 1 Ridgeway Villas, Kilmainham Lane, Dublin 8.

Aidan and Susan Waterstone, 4 The Apex, Kilmainham Lanem Dublin 8.

- Excessive height and scale, overdevelopment of the site, out of character with existing low rise development, adverse impact on existing residential properties, overbearing impact, overshadowing and overlooking. Proposed amendments by the appellants does not address issues regarding design and scale.
- Inappropriate quality and mix of apartment units.
- Lack of adequate parking provision in an area with existing traffic/car parking issues with potential overspill of car parking generated exacerbating existing issues.
- Proposal is premature pending the outcome of the Camac River Flood Alleviation Scheme.
- Impact on architectural heritage with the proposal in close proximity to Kilmainham Mill a protected structure and failure to acknowledge the heritage value of the river and the area in general, impact on the ecology of such, insufficient justification for demolition of the historic bridge on site.



## 7.0 Assessment

- 7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/zoning objective

Quality of residential development/Development Control Objectives

Visual Impact/Architectural Character

Adjoining Amenity

Traffic Impact

Flood Risk

Architectural heritage/archaeological impact:

Revised proposal

- 7.2. Principle of the proposed development/zoning objective:

- 7.2.1 The proposal is for demolition of existing commercial structures and construction of a mixed use development with 1 no. ground floor commercial unit and 74 no. apartments. The appeal site is zoned Z6 with a stated objective 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'. It is stated that it is "considered that Z6 lands constitute an important land bank for employment use in the city, which is strategically important to protect. The primary objective is to facilitate long-term economic development in the city region". In relation to uses it required "to incorporate mixed uses in appropriate ratios. All such uses, including residential and retail, shall be subsidiary to employment-generating uses and shall not conflict with the primary aim of the Z6 land-use zoning to provide for the employment requirements of the city over the Development Plan period and beyond and shall not detract from existing centres". Residential use is identified as being open-for-consideration in this zoning.

- 7.2.2 Permission was refused on the basis that the proposal provides a limited extent of employment generating floor space and the significant constraint to the future

development potential of the adjoining site which would arise from the scale and layout of the proposed blocks. The proposal was considered contrary to the zoning objective. I would note that the proposal was not regarded as being a material contravention of zoning policy. It is clear based on the site inspection that the appeal site has been in commercial use for a significant period of time (currently vacant) and that the site and area is no longer suitable for commercial use due to existing pattern of development and restrictions in terms of existing road network and its accessibility for commercial type development and the traffic associated with such. It is clear that new employment uses may favour more accessible locations on outskirts of the city close to major transport infrastructure such as the M50. It is also clear that the appeal site and this sort of location is very suitable for residential development and the provision of such on these lands is desirable due to proximity to the city centre and accessibility to public transport. I would consider that the use of the site for residential purposes is in keeping with the overall development objectives for residential development as set out under the City Development Plan and the National Planning Framework and to preclude a residential development at this location based on the Z6 zoning objective would not be in accordance with proper planning and sustainable development of the area. As noted earlier permission was not refused on the basis of material contravention of the zoning objective and residential development is open for consideration. On this basis I would consider the provision of mainly residential development is in accordance with the proper planning and sustainable development of the area is in keeping with the predominant established use type in the area.

### 7.3. Quality of Residential Development/Development Control Objectives:

7.3.1 Permission was refused on the basis that quality of residential development with the proposal considered to be contrary the Guidelines on Sustainable Urban Housing: Design Standards for New Apartments (2018) and the provision of Chapter 16 of the Dublin City Development Plan 2016-2022 due to the level of provision of single-aspect north facing units and non-provision of additional floor area for units. The relevant standards for quality of residential development Sustainable Urban Housing: Design Standards for New Apartments (December 2020).

7.3.2 Minimum floor area for apartments under Section 3.4 is 45sqm, 73sqm (two bed 4 person units) and 90sqm for one, two and three bed units respectively. Provision is made for two-bed 3 person apartments with a floor area of 63sqm specified. In the case of the proposed development the minimum floor area is met in all circumstances with the provision of

30 no. one bed units

5 no. two bed units (3 person)

32 no. two bed units (4 person)

1 no. three bed unit

Under Section 3.8 there is a requirement for “the majority of all apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10% (any studio apartments must be included in the total, but are not calculable as units that exceed the minimum by at least 10%)”. In this case the proposal does not meet the requirement to exceed the minimum floor area by at least 10%. In the case of the proposed development all apartments exceed the minimum standard by some % with a minority of units exceeding it by 10% (9 units out of 31 in Block A and 7 units out of 37 in Block B) with aggregate % of floor area over all units not exceeding 10%. In this regard the proposal is not compliant with one of the main standards set out under the relevant guidelines in relation apartment quality and layout. The proposal would be fail to meet the standards set out under the Sustainable Urban Housing: Design Standards for New Apartments (December 2020).

### 7.3.3 Under Specific Planning Requirement 4

In relation to the minimum number of dual aspect apartments that may be provided in any single apartment scheme, the following shall apply:

(i) A minimum of 33% of dual aspect units will be required in more central and accessible urban locations, where it is necessary to achieve a quality design in

response to the subject site characteristics and ensure good street frontage where appropriate in.

(ii) In suburban or intermediate locations it is an objective that there shall generally be a minimum of 50% dual aspect apartments in a single scheme.

(iii) For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha , planning authorities may exercise further discretion to consider dual aspect unit provision at a level lower than the 33% minimum outlined above on a case-by-case basis, but subject to the achievement of overall high design quality in other aspects.

Out of the 74 no. apartments proposed, 23 are single aspect with all other units being dual aspect. This is a percentage of 31%, which would meet the recommendations of the guidelines of 33%.

All apartment units are provided with balcony areas. The requirement under the Sustainable Urban Housing: Design Standards for New Apartments (December 2020) is for 5, 6, 7 and 9sqm for one bed, two (3 person), two bed (4 person) and three bed units respectively. This standard is met in all cases.

7.3.4 In considering daylight and sunlight impacts, the Apartment Guidelines (2020) state that PA's should have regard to quantitative performance approaches outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' (Section 6.6 refers). I have had regard to both documents. A Daylight and Sunlight Assessment report has been submitted with the application, which I have considered. I note that internal spaces have been examined. The potential impact in terms of neighbouring properties has also been addressed, which I discuss separately in section 7.5 hereunder. With regard to the internal spaces, the apartment units at first to seventh floor have been analysed in the submitted report to determine the Average Daylight Factor for each unit. BRE209 uses the recommendations of BS8206-2 Code of practice for daylighting for ADF of 5% for

well day lit space, and also the specific minimum standards for different residential room types as follows: Kitchens min. 2.0%, Living Rooms min 1.5%, Bedrooms min 1.0%. I note the updated BS EN 17037:2019 has replaced BS8206-2, however, I note BS 2008 remains the applicable standard, as provided for in the s.28 Guidelines and Development Plan, and notwithstanding this the BS and BRE guidance allow for flexibility in regard to targets and do not dictate a mandatory requirement. In terms of shared kitchen/dining/living (KDL) space, an ADF of 1.5% is applied to the site. The British Standards BS 8206-2:2008 are where these values in the BRE guidelines are derived from. The BS guidance states that “where one room serves more than one purpose, the minimum average should be for the room type with the highest value. For example, in a space which combines a living room and a kitchen the minimum average daylight factor should be 2%). The applicants report indicates target value of 1% for bedrooms, 1.5% for living areas, 2% for kitchens and 2% for shared KDL spaces. The assessment relates to the ground floor and first floor of Block A and first floor of Block B with the lower levels of the blocks likely to have the lowest daylight levels. The results for ADF show that all rooms including bedrooms, living/dining space, kitchens and shared KDL spaces meet the target values and are compliant with the recommended standards set down under the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’.

7.3.5 The BRE guidelines state that in terms of sunlight access, for an external garden or amenity space to appear adequately lit throughout the year, it should be capable of receiving at least two hours of sunshine on 21st March on 50% of the space. The report includes an assessment of amenity space for public/communal amenity space within the proposed development. There is public open space provided between the blocks and to the side of Block A and Block B with communal space provided to the south of Block B and north west of Block B. the results indicates that both spaces will receive at least two hours of sunshine on 21st March over 50% of both public and communal amenity space.

7.3.6 The proposal provides for a development with plot ratio of 2.5 and site coverage of 89%. The permissible plot ratio within the Z6 zoning is 2.0-3.0 (Section 16.5) under

the City Development plan. In relation to site coverage indicative site coverage for the Z6 zoning is 60% (section 16.6) under the City Development plan. The proposal is compliant with Development Plan policy in this regard.

7.3.7 The proposed development consists of two blocks, Block A has a height of 19.935m and Block B has a height of 25.65m. In terms of building height Section 16.72 of the City Development Plan sets out policy and identifies areas in which low-rise, mid-rise and high-rise structures are permissible. In the case of the Inner City low rise is indicated as being 24m in height for residential and 28m for commercial development. I would be of the view that the overall height of the structure proposed is consistent with Development Plan policy in relation to building heights.

#### 7.4 Visual Impact/Architectural Character:

7.4.1 One of the refusal reasons states that the proposal is excessive in height, form and massing in proportion to surrounding structures, feature and streetscape and would constitute overdevelopment, which would be visually overbearing, obtrusive and would seriously injure the character of the local area and setting of nearby protected structures, particularly Kilmmainham Mills. The appeal site is located in an existing built up area characterised by a mixed pattern of development consisting of two-storey dwellings, some commercial development in the form of warehousing. The northern part of the appeal site is located within a conservation area and there is protected structure in the form of Kilmmainham Mills located to the north west of the site. The proposal is for two blocks on site, Block A on the southern part of the site is six-storeys in height and Block B on the northern part of the site is eight-storeys. The overall design and architectural character of the blocks are contemporary in nature and the materials are not atypical of apartment development currently being proposed and permitted within the city. The question that arises is whether the scale of the development can be comfortably integrated at this location, which has varied pattern of development on adjoining sites and is a historical area with the site partially impacted by a conservation area and a protected structure in close proximity to the site.

7.4.2 The applicants submitted photomontages illustrating the visual impact from a number of views in the surround area as well as providing a Townscape and Visual Impact Assessment. The applicants assessment of the proposal is that it will have an acceptable visual impact with the significance of effect noted as being slight/neutral from most viewpoints and positive from a number of viewpoints. It is regarded as having significant/negative impact from only one view point (Millbrook terrace/Lady's Lane to the west).

7.4.3 As noted above the development consists of 2 no. blocks six and seven-storeys in height. The main road frontage of the site is along Old Kilmainham, which has a varied pattern of development. Levels on the site fall towards the Camac River, which defines the southern boundary of the site. The northern part of the site is Conservation Area with a protected structure in close proximity to the site in the form of Kilmainham Mills. The mill structure is not highly visible in the area due to its height and existing vegetation with an existing chimney being the most prominent element and quite visible in the surrounding area. The overall design of the proposed development is quite bulky in scale and is lacking in any attempt to provide a more gradual transition or structures of reduced physical scale. I would be of the view that the design is lacking in any great sensitivity towards the character of the area with the proposed development having a significant and unsympathetic visual impact in the surrounding area. I do consider that there is scope for increased height and density on site over the existing pattern and scale of development, however I consider that the development proposed fails to provide for a design and scale that comfortably integrates with its surroundings and would have a negative and visually obtrusive impact in the surrounding area, particularly when viewed along Old Kilmainham and from Lady's Lane/Millbrook terrace. I would recommend refusal on the grounds the proposed development would be visually obtrusive and have a negative impact on the visual amenities of the area.

7.4.4 In relation to the setting of the protected structure to the north west, I would be of the view that although the design and scale would have an adverse impact in the area and fails to provide for a design of sufficient quality or sensitivity in the area, I would

stop short in recommending refusal in relation to the setting of the protected structure. I would be of the view that the site is sufficiently separated from the site of the protected structure and that the issues regarding design and visual impact relate to the design and its impact in terms of the streetscape in particular along Old Kilmainham and Lady Lane. The design is bulky in scale and generic in design and would not be of sufficient architectural quality at this location.

#### 7.4 Adjoining Amenity:

7.4.1 There are a number of uses on the adjoining sites. The site to the east is in commercial use (car hire). To the west are two-storey dwellings fronting Old Kilmainham and adjoining the south western corner of the site. A number of single-storey dwellings fronting Lady Lane back onto the western boundary of the site. Single-storey dwellings in Millbrook Terrace have their side gables adjoining the western boundary (no.3) or facing the boundary. To the south and on the opposite side of Old Kilmainham are two-storey dwellings. The northern boundary of the site is defined by the Camac River and beyond this are two-storey dwellings fronting Rowserstown Lane and back onto the Camac River. There are a number of observations from residents in the surrounding area regarding the impact of the development in terms of overbearance, overshadowing and overlooking. In addition permission was refused on the basis of impact on the development potential of the adjoining commercial site to the east.

7.4.2 Section 3.2 of the Urban Development and Building Height Guidelines (2018) states that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. The Guidelines state that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in



respect of which the PA or ABP should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and / or an effective urban design and streetscape solution. The Sustainable Urban Housing Design Standards for New Apartments Guidelines (updated 2020) also state that PA's should have regard to these BRE or BS standards (S6.6 refers).

7.4.3 The applicant's assessment of daylight, sunlight and overshadowing relies on the standards in the following documents: - BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) – the documents referenced in Section 28 Ministerial Guidelines. I have given a detailed description of the interface between the proposed development and existing housing earlier in this report. I have also carried out a site inspection, considered the third party submissions that express concern in respect of potential impacts as a result of overshadowing/loss of sunlight/daylight and reviewed the planning drawings. In considering the potential impact on existing dwellings I have considered – (1) the loss of light from the sky into the existing houses through the main windows to living/ kitchen/ bedrooms; and (2) overshadowing and loss of sunlight to the private amenity spaces associated with the houses (rear gardens in this instance).

7.4.4 A Daylight and Sunlight Report has been submitted with the application (November 2020). The report focuses on properties in the vicinity with focus on properties along Old Kilmainham to the south, south east and south west (VSC), Kearns Court to the east of the site (VSC and APSH), Towers Terrace to the north east of the site (VSC and APSH), Lady's Lane to west of the site (VSC and sun lighting) and Millbrook terrace to the west of the site (VSC and APSH). I have considered the reports submitted by the applicant and have had regard to BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) –

7.4.5 The BRE guidance on daylight is intended for rooms in adjoining dwellings where daylight is required, including living rooms, kitchens, and bedrooms. Criteria set out in Section 2.2 of the guidelines for considering impact on existing buildings are summarised as follows:

(i) Is the separation distance greater than three times the height of the new building above the centre of the main window? In such cases the loss of light will be small. If a lesser separation distance is proposed further assessment is required.

(ii) Does the new development subtend an angle greater than  $25^{\circ}$  to the horizontal measured from the centre line of the lowest window to a main living room? If it does further assessment is required.

(iii) Is the Vertical Sky Component (VSC)  $>27\%$  for any main window? If VSC is  $>27\%$  then enough skylight should still be reaching the window of the existing building. Any reduction below this level should be kept to a minimum.

(iv) Is the VSC  $<0.8$  of the value before? The BRE guidance states that if VSC with new development in place is both,  $27\%$  and,  $0.8$  times its former value, occupants of the existing building will notice the reduction in the amount of skylight.

(v) In the room impacted, is area of working plan which can see the sky less than  $0.8$  the value of before? (i.e., of 'yes' daylighting is likely to be significantly affected). Where room layouts are known, the impact on daylight distribution in the existing buildings can be assessed.

7.4.6 In relation to Old Kilmainham the properties assessed for VSC are windows on the rear of no. 34 to the south east, windows on the rear of no. 41a and 41b to the south west, windows on side and front elevation of no. 53a, b, c, d, e, f, g, h and i to the south west of the site and the front elevation of no.s 54-58 and no.s 59-63 to the south. All windows on no. 34 meet the standard (less than  $0.8$  times baseline value) apart from one window. All window in no. 53 and no. 59-63 meet the  $27\%$  standard post development. In the case of no.s 41a and 41b windows on the ground floor rear elevation fall below the standard with impact assessed as being moderate (two windows with  $53$  and  $55\%$  of their former standard). In the case of no. 54-55 a number of windows fall below the standard with impact assessed as slight to moderate and values of  $66\%$  of their former level measured in terms of worst case

scenario. In the case of Kearns Court located to the east of the site and beyond the commercial site adjoining the eastern boundary VSC standards for windows assessed are compliant with the recommended standards (0.8 times baseline value).

7.4.7 In the case of 1 to 4 Tower Terrace to the north east the windows on the rear assessed retain the required standard in the case of all but one window (0.8 times baseline value) with impact assessed as not significant and the window in question retaining 99% of its former value. In the case of 1-7 Millbrook Terrace to the west the windows on the rear assessed retain the required standard in the case of all but one window (0.8 times baseline value) with impact assessed as not significant and the window in question retaining 98% of its former value. In relation to no. 2-4 Lady's Lane to the west of the site all windows assessed fall below the recommended standard with impact assessed as slight to moderate and the windows retaining between 50%-82% of their former value.

7.4.8 In relation to APSH sunlight may be adversely affected if:

APSH < 25% or < 5% between 21<sup>st</sup> of September and 21<sup>st</sup> March; AND receives < 0.8% times its former APSH; and reduction over the whole year > 4% of APSH.

APSH is required to be assessed if some part of the new development is within 90 degrees of due south of a main window or wall of an existing building. In this case the properties assessed are Kearns Court to the east of the site, 1-4 Tower Terrace to the north east and 4-7 Millbrook Terrace to the west of the site. In the case of all windows analysed a standard of well above 25% and 5% in winter months is retained post development. This standard would meet the recommended standard set out under the BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011).

7.4.9 The impact of sunlight in the amenity areas serving existing development in the vicinity and the open space areas provided in the scheme are assessed. This is based on a target level of 2 hours of sunlight on March 21<sup>st</sup>. The assessment is in relation 2-4 Lady's Lane to west of the site.

#### 7.4.10 Overshadowing of the permitted development compared to the proposed

development has been set out in the submitted report. Shadow profiles are included for March 21<sup>st</sup> (07:00-18:00 every hour) June 21<sup>st</sup> (06:00-21:00 every hour) and December 21<sup>st</sup> (09:00-16:00 every hour). Shadows cast will mostly impact to the north and north east of the site. The shadow analysis shows that the proposal will result increased overshadowing during March in the first half of the day. In June there is no significant perceptible change in overshadowing. During December there is an increased level of overshadowing throughout the day. I would consider that although there is an increased level of overshadowing, that the level of such is an acceptable degree in the context of the location of the site. I would note that there is no significant change for a number of properties in immediate vicinity due to the existing built up nature of the area and the level of existing development on site. I would also note that the level of overshadowing would unlikely to be significantly different if the development was greatly reduced in height. I would consider that the site is an appropriate site for some level of increased height over the existing development in the immediate vicinity due to its location in the city centre location, its proximity to public transport, the city centre, employment uses and in light of national policy regarding residential development in urban areas. I would be of the view that the level of overshadowing caused by the proposed development is an acceptable level in an urban context such as this and as noted earlier the impact of the development in terms of daylight and sunlight to adjoining properties and the development itself is of a good standard when measured against the relevant guidelines for such.

7.4.11 The issue of overlooking, overbearing impact and privacy is raised in the appeal submissions. The appeal site is an inner city location. The location of the site and its accessibility to the city centre and wider area, public transport makes the site suitable for an increased level of development. I would be of the view that the urban context and specific characteristics of the site and its location merit an increased level of development and that in such locations that a level of overlooking and reduced privacy is an unavoidable consequence of urban development. As noted above I would be of the view that the proposal is excessive in scale relative to

adjoining developments and I would have some concerns regarding the potential overbearing impact on adjoining properties due to the proximity and height of Block B as well positioning of balconies relative to existing residential properties, in particular the dwellings at Old Kilminaham to the south west of the site, along Lady Lane and Millbrook Terrace. I would be of the view that overall design and scale would have an overbearing impact relative to the existing dwellings concentrated along at Old Kilminaham to the south west of the site, along Lady Lane and Millbrook Terrace resulting in a reduced level of privacy and being injurious to residential amenity.

7.4.12 The refusal reason also note concerns regarding the impact on the development potential of the adjoining sites to the east, which is currently in commercial use and is similar in nature to the existing use of the appeal site. In the case of Block A such has a blank gable adjoining the eastern boundary, which would allow for a similar level of development to abut the proposed structure. In the case of Block B, its eastern elevation has a significant level of windows/glazing and balconies and proposed a separation distance of just over 3m. I would consider that the proximity and design of Block A does have to potential to curtail the development potential of the adjoining site to a similar degree as proposed on the appeals site.

## 7.5 Traffic impact:

7.5.1 Permission was refused on the basis of traffic impact and specifically failure to provide off-street car parking or facility for service/delivery vehicles with concerns regarding overspill into the surrounding area and obstruction of the public road. Old Kilmainham Road is serviced by a QBC with future Bus Connects proposals along this route. In addition the appeal site is within 600m (walking distance) of Suir Road Luas stop and 1000m (walking distance) of Fatima Luas Stop and 1.3km (walking distance) of Hueston Station. Under Development Plan policy the appeal site is located in Area 2 (Map J) and under Table 16.1 the maximum parking requirement is 1 space per dwelling for residential. Under Section 16.38.8 relating to Residential Car Parking in Apartments it is stated that “car parking standards are maximum in nature and may be reduced in specific, mainly inner city locations where it is demonstrated that other modes of transport are sufficient for the needs of residents.

In other locations, it is considered desirable that one car parking space (or as required by Table 16.1) be provided off-street within the curtilage of the development per residential unit, as car storage requirements cannot be met on-street for all residents. Each space shall be permanently assigned to and sold with each apartment and shall not be sublet or leased to non-residential owners or occupiers. Where sites are constrained or provision of on-site car storage is not possible, alternative solutions will be considered such as residential car clubs or off-site storage”.

7.5.2 The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, December 2020 note in relation to central/accessible location that “in larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such as rail and bus stations located in close proximity. These locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services”.

7.5.3 In the case of the appeal site I would regard it as an accessible location particularly in regard to the fact it is in walking distance of the city centre and a significant level of employment uses in the surrounding area. The appeal site is also within 600m/9min walking distance of Suir Road Luas stop on the red line. I would be of the view that the appeal site is at a location that is accessible for other modes of transport and the lack of provision of car parking is a sustainable approach to development of the site. I would consider that the proposal would be compliant with both Development Plan policy as set out under Section 16.38.8 and the

recommendations of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, December 2020.

7.5.4 In relation to concerns regarding overspill of parking I would note that the provision of development without the expectation of parking and on the basis of use of other modes of transport is a reasonable development approach in the city. I would note that the appeal site is located in an area with parking control in operation with a pay and display and permit parking regime in place. I would note that the Planning Authority have control over the level of parking permits in the area and that this level of control in conjunction with the fact that the site is accessible to other modes of transport and the expectation level of no parking would deal adequately with this issue.

7.5.5 The refusal reason raises concern regarding potential obstruction of traffic on the road including the QBC and future Bus Connects proposals in part due to the lack of parking and lack of provision of service/delivery vehicles. The applicant/appellant has provided for an amended plan to provide a set-down area for service/delivery vehicles adjacent the western boundary with a swept path analysis drawing (drawing no. DR-C008) showing how these vehicles will be able to comfortably maneuverer on site.

7.6 Flood Risk:

7.6.1 The second reason for refusal states that having regard to Appendix 3 of Volume 7 of the City Development Plan 2016-2022, Site 17. Lower Camac: South Circular Road to Liffery Estuary and the location of the site partially in Flood Zone B and which is undefended, it is considered that a development of this scale on this site is premature pending the outcome of the Camac River Flood Alleviation Scheme, which is currently at preliminary design stage. The proposed development in an area which is at risk of flooding and would be contrary to the proper planning and sustainable development of the area.

7.6.2. The Planning System and Flood Risk Management Guidelines, 2009 outline in Table 3.1 the 'vulnerability of different types of development'. I am satisfied that the proposed development consisting of mainly residential development is considered a "vulnerable" development in terms of the sensitivity to flooding.

7.6.3. A Flood Risk Assessment accompanied the planning application. The report identifies historical flood events with a number incidences identified in relation to the site or in close proximity. Based on the eastern catchment Flood Risk Assessment and Management Study (CFRAM)) the appeal site is partially located with Flood Zone B with the majority of the site within Flood Zone C. The sources of flooding in relation to the site and the area are identified as being fluvial and pluvial/surface water with no risk of tidal flooding or from groundwater sources identified in relation to the site. Under The Planning System and Flood Risk Management Guidelines, 2009 there is a requirement to carry out a justification test for vulnerable development that is located within Flood Zone B.

7.6.4 The flood risk assessment provides for estimation of flood risk based on the hydrological characteristics of the catchment area, provision of flow estimation based on the CFRAM study for the River Camac. A hydraulic model has been used to identify where post development could interfere with flow routes or remove floodplain storage and to identify the required freeboard and associated finished floor levels (FFL).

The baseline modelling is carried out to define the flood extents for the 1%AEP and 0.1% AEP events. The modelling takes into account existing flood defences in the area with the appeal site currently undefended. It is noted that the existing bridge to the north of the site and narrowing of the channel are contracting flow resulting in water overspilling the south bank onto the site.



7.6.5 A number of mitigation measures are proposed. The removal of the existing bridge to the north of the site which is constricting flow and based on modelling would decrease flood risk and would not increase flood risk downstream.

Design flood levels for the development are

1% AEP flood level: 11.05m OD

1% AEP flood level with climate change: 11.24m

0.1% AEP flood level: 11.50mOD.

A freeboard of 200mm has been adopted for floor levels.

In the case of Block A it is on the southern part of the site and not exposed to flood risk with its FFL and ground elevation up to 1m higher than the modelled flood levels.

The ground floor entrance for the main part of Block B is set at 11.30m OD. The residential floor levels are 14.8m OD and are over 3m above the 1% AEP flood level

The report concludes that there is a high risk of flooding affecting the site from fluvial and pluvial sources. It is set out that mitigation measures incorporated in the design will ensure that that development is flood resilient and does not increase flood risk in other areas.

7.6.6. National planning policy supports the consideration of flood risk management as an important part of achieving proper planning and sustainable development. However, the Planning System and Flood Risk Management Guidelines, 2009 sets out that a precautionary approach should be applied to reflect uncertainties in flooding datasets and risk assessment techniques and the ability to predict the future climate and performance of existing flood defences. Development should be designed with careful consideration to possible future changes in flood risk, including the effects of climate change and / or coastal erosion so that future occupants are not subject to unacceptable risks. The guidelines further state that flood risk to, and arising from,

new development should be managed through location, layout and design incorporating Sustainable Drainage Systems and compensation for any loss of floodplain as a precautionary response to the potential incremental impacts in the catchment.

7.6.7. Section 2.1.2 of the Appendix 7: Strategic Flood Risk Assessment of the Dublin City Development Plan states that there are three main rivers in Dublin City, the Tolka, the Liffey and the Dodder. There are also many smaller rivers including the Camac. Flooding from the rivers arises when the capacity of the channel is exceeded, and water flows out over the riverbanks. This is normally linked to prolonged rainfall and storm (surface) water runoff entering the channel. Flooding from the rivers can also occur if the channel or the inlet to a culvert becomes blocked. The Camac Flood Alleviation Study is now underway and is at preliminary design stage. It is recognised that there are a large number of buildings within the Camac Catchment identified as being at significant flooding risk, including the appeal site and for this reason this study has been given a high priority. This is a full catchment study which includes the Camac River itself, its tributaries and the pipes that feed them. The Camac River flows from its source near Saggart Hill to the outfall to the River Liffey at Heuston Station. The Camac is a heavily urbanised watercourse, which brings particular challenges both for flood risk management and environmentally, especially in the light of climate change. Furthermore, I have reviewed the Camac - Eastern study which sets out that Kearns Bridge to the east of the site is identified as a flow constriction impacting flood risk in the area.

7.6.8. The site is a brownfield site located in an urban area and whilst I recognise the applicant has provided a detailed flood risk report including mitigation measures a precautionary approach is justified in the context that there is high priority flood alleviation scheme for the area in the process of being carried out. I would refer the Board to the planning history of the area, which include a recent refusal on a site to the east on the basis of prematurity in light of the flood risk alleviation scheme (ABP-306814). I would consider that a piecemeal approach to the development of the lands at this location impacted by flooding would be inappropriate in light of flood alleviation proposals and that a precautionary approach should be adopted to

development at this location. Therefore, having regard to the location of the site in Flood Zone B, which is undefended, history of flooding on the site and adjoining lands, I am not satisfied that the development appropriately mitigates the risk of flooding on the site and the wider area in the absence of the completed Camac River Flood Alleviation Scheme. I would agree with the planning authority that the development is premature pending the Camac River Flood Alleviation Scheme. In addition, the Division notes that development has inadequate regard to policy of the City development Plan (GI15 and GI16), which advocate the creation and enhance of riparian corridors and protection of the ecological character and value of the river. In this regard, I note the site is in a heavily urbanised area with limited riparian corridor. However, I note that certain river rehabilitation measures can be incorporated into the development e.g. enhance or extend riparian corridors, green infrastructure, or in some cases simply that land adjacent to the river is preserved in a wild state.

#### 7.7 Architectural heritage/archaeological impact:

7.7.1 There is an existing bridge providing access to the site from Rowserstown Lane to the appeal site. The existing bridge is comprised of a flat deck with metal railings over an older stone arched bridge structure. Permission was refused based on the fact that the existing bridge is considered to be of potential historical and archaeological significance, contributing to the understanding of the built heritage of the city and the local area. It was considered that it has not been satisfactorily demonstrated that the proposed demolition of the existing bridge would not be contrary of the Dublin City Development Plan, 2016-2022, in which according to section 16.10.17 the retention and reuse of historic buildings not included on the record of protected structures is encouraged, and Policy Objective CHC1 which provide for the preservation of built heritage making positive contributions to the character and appearance of the area.

7.7.2 The bridge is described in the Conservations Officer's report as being c.1830. The report indicates that although the bridge is rated as being of local importance only on the NIAH it is the last remaining historic link between the site's former Riverdale

House to Rowsertown Lane and the entrance to the Kilmainham Mills (protected structure) complex. The appellants' response includes a report from a conservation architect. The report questions the status of the bridge in relation to the appeal site and whether such was actually part of the appeal site in the past existence. The report highlights the fact that the bridge was assessed for the purposes of the National Inventory of Architectural Heritage and was assigned as being of local importance and the fact that the Local Authority have not added such to the list of protected structures.

7.7.3 The existing bridge is clearly of considerable age and consists of a stone arched structure with a later concrete deck and railings. There is diverging views regarding the status and age of the bridge, its status relative to Kilmainham Mill, its status relative to former historical buildings on the site. On this issues I would defer to the most recent assessment of the existing structure in terms of architectural heritage. The bridge was not deemed to be of sufficient architectural heritage status to be added to the record of protected structures under the City Development Plan and was assessed as part of National Inventory of Architectural Heritage. I would also note that the flood risk assessment does indicate that the existing bridge contributes to existing flood risk issues at this location and its replacement with a structure allowing better flow would be of benefit in terms of flood risk. Having regard to the fact the site is a brownfield site in a location suitable for additional residential development consistent with the overall development objectives of the City development Plan and the National Planning Framework Plan taken in conjunction with the existing conservation status of the bridge and the potential impact of such in terms of flood risk, I would consider that there is justification for its demolition and replacement with a new bridge.

7.7.4 Permission was refused on the basis of being within a Zone of Archaeological Constraint for Recorded Monument DU018-020 (Dublin City) and within the Zone of Archaeological Interest of the Dublin City Development Plan 2016-2022, and the lack of an Archaeological Assessment submitted in support of the application, it has not been demonstrated that the proposed development would be acceptable in terms

of archaeological impact, contrary to Policy CHC9 of the Dublin City development Plan 2016-2022 and to the proper planning and sustainable development of the area. The applicant did submit an Archaeological Impact Assessment report. The report identifies that the site is within the confines of Recorded Monument DU018-020, which is historic town of Dublin and covers the core area of the city. The report identifies 5 other recorded monuments in the vicinity with the nearest being Kilmainham Mill to the northwest (DU018-020288) and Kearns Bridge to the northeast (DU18-020299). The report also provides a summary of previous fieldwork carried out in the area with indication that the fieldwork in cases nearest the site did not yield anything of archaeological significance. The site was subject to field inspection, which did not yield anything of significance and is stated that the site is already occupied by existing structures. Mitigation proposals including archaeological testing to be carried out following demolition of the existing structure under licence and preservation in-situ or record of anything features or significance.

7.7.5 The site is within the historic city recorded monument, which is not a specific feature and covers a larger area of medieval core of the city. The appeal site is also a brownfield site and has been previously disturbed with a significant level of existing structures on site. Having regard to archaeological assessment submitted by the applicant, I am satisfied an appropriate condition requiring pre-development testing is sufficient in this case in the event of grant of permission.

7.8 Revised proposal:

7.8.1 In the appeal response the applicant has submitted an amended design with the main changes omission of 2 units in Block B and its alteration from 6-8 storeys to 5-8 storeys, removal of an overhang to Block A and omission of 4 no. units with an increased level of separation between Block A and no. 41 Old Kilmainham, increased setback of Block 1 from the public footpath (reduced floor area to 5,874sqm). The amendments are noted and such do reduce the scale of the proposal to some degree mainly the northern element to the rear of Block B and an overhanging element on the front elevation of Block A. I would be of the view that the amendment does not adequately deal the issues of concern raised in the

aforementioned sections of this report and that the issues raised in relation to overall design, scale, layout and flood risk still apply to the proposal.

## 8.0 **Appropriate Assessment**

8.1 The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. 13.1.1.

### 8.2 Compliance with Article 6(3) of the Habitats Directive

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3). The applicant has submitted a Screening Report for Appropriate Assessment as part of the planning application (December 2020). The Screening Report has been prepared by Moore Group-Environmental Services and is supported by an Ecological Impact Assessment. The Report provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. The AA screening report concludes that the proposed development either alone or in-combination with other plans and/or projects, does not have the potential to significantly affect any European Site, in light of their conservation objectives. Therefore, a Stage 2 Appropriate Assessment is deemed not to be required."

Having reviewed the documents and submissions, I am satisfied that the submitted information allows for a complete examination and identification of all the aspects of

the project that could have an effect, alone, or in combination with other plans and projects on European sites.

### 8.3 Need for Stage 1 AA Screening

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

### 8.4 Brief Description of the Development

The applicant provides a description of the project in Section 3.2 of the Screening Report. The development is also summarised in Section 3 of this Report. In summary, permission is sought for a mixed use development comprising of a ground floor commercial unit and 74 no. apartments in a structure ranging from 6-8 storeys (2 no. blocks) on a site of 0.0212 ha situated in an urban area of Dublin. The site is a brownfield site that contains a currently vacant commercial development. No Annex 1 habitats were recorded within the application site, which is occupied by an existing commercial structures.

### 8.5 Submissions and Observations

The submissions and observations from the Local Authority, Prescribed Bodies, and third parties are summarised in sections 6 of this Report. The submissions do not refer to AA concerns.

### 8.6 Zone of Influence

A summary of European Sites that occur within the vicinity of the proposed development is presented in the applicant's AA Screening Report (Table 1 Section

4). In terms of the zone of influence, I would note that the site is not within or immediately adjacent to a Natura 2000 site. The nearest European sites are

South Dublin Bay and River Tolka Estuary SPA (004024), 5.45km from the site.

South Dublin Bay SAC (000210), 6.16km from the site.

North Bull Island SPA (004006), 8.49km from the site.

North Dublin Bay SAC (000206), 8.50km from the site.

Glenasmole Valley SAC (001209), 10km from the site.

Wicklow Mountains SAC (002122), 11.37km from the site.

Wicklow Mountains SPA (004040), 11.41km from the site.

Rye Water Valley/Cartron SAC (001398), 12.46km from the site.

Baldoyle Bay SAC (000199), 13.08km from the site.

Baldoyle Bay SPA (004016), 13.45km from the site.

Howth Head SAC (000202), 14.24km from the site.

Rockabill to Dalkey Island SAC (003000), 14.37km from the site.

The closest European Sites are identified as being the South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA both located between 5-6km from the appeal site. The main pathway to the European sites is hydrologically via the River Liffey and in this was the nearest sites are the South Dublin Bay and River Tolka Estuary SPA located over 7km downstream, the North Dublin Bay SAC and North Bull Island SPA which are located over 9km downstream. There is no connectivity to any other of the European sites listed and they are screened out of the assessment.

8.7 Section 5.1 of the applicant's screening report identifies all potential impacts associated with the proposed development taking account of the characteristics of the proposed development in terms of its location and scale of works, examines whether there are any European sites within the zone of influence, and assesses whether there is any risk of a significant effect or effects on any European sites, either alone or in combination with other plans or projects. The issues examined are



habitat loss or alteration, habitat/species fragmentation, disturbance and/or displacement of species, changes in population density and changes in water quality and resource. The potential for habitat loss or habitat/species fragmentation is ruled out due no direct habitat loss or alteration. Direct impacts on SPA bird species is also ruled out given the nature of the development with an urban zone, existing level of human activity in the area, background noise and distance of the site from Dublin Bay. The possibility of a hydrological connection between the proposed development and habitats and species of European sites in Dublin Bay (South Dublin Bay SPA, North Dublin Bay SAC, South Dublin Bay and Tolka River Estuary SPA ad North Bull Island SPA) is noted.

In relation to surface water the distance between the site and the European sites in Dublin Bay (over 7km) is such that there is buffer over which any potential pollutants would be absorbed and diluted.

In relation to wastewater treatment foul wastewater will be collected and discharged to the municipal sewer, which in turn discharges to the Ringsend Wastewater Treatment Plant. It is noted there are capacity constraints of the existing plant however permission is granted for an upgrade of the plant. It is noted that the peak effluent discharge would not contribute significantly to the licensed discharge capacity of the plant and would not impact overall water quality within Dublin Bay.

In relation to Invasive species Japanese knotweed was recorded on the downstream side of the connecting bridge over the River Camac. The area was assessed by a specialist and treatment plan will be employed with no potential for invasive species reaching the European sites in Dublin Bay.

## 8.8 Screening Assessment

The Conservation Objectives (CO) and Qualifying Interests of sites in inner Dublin Bay are as follows:

South Dublin Bay SAC (000210) - c. 6.16 km from the site.

CO - To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.  
Qualifying Interests/Species of Conservation Interest: Mudflats and sandflats not covered by seawater at low tide [1140] / Annual vegetation of drift lines [1210] / Salicornia and other annuals colonising mud and sand [1310] / Embryonic shifting dunes [2110]

North Dublin Bay SAC (000206) – c. 8.50 km from the site.

CO - To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.  
Qualifying Interests/Species of Conservation Interest: Mudflats and sandflats not covered by seawater at low tide [1140] / Annual vegetation of drift lines [1210] / Salicornia and other annuals colonising mud and sand [1310] / Atlantic salt meadows (*Glauco-Puccinellietalia maritimi*) [1330] / Mediterranean salt meadows (*Juncetalia maritimi*) [1410] / Embryonic shifting dunes [2110] / Shifting dunes along the shoreline with *Ammophila arenaria* [2120] / Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] / Humid dune slacks [2190] / *Petalophyllum ralfsii* (Petalwort) [1395].

South Dublin Bay and River Tolka Estuary SPA (004024) - c. 5.45 km from the site.

CO – To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. Qualifying Interests/Species of Conservation Interest: Light-bellied Brent Goose (*Branta bernicla hrota*) [A046] / Oystercatcher (*Haematopus ostralegus*) [A130] / Ringed Plover (*Charadrius hiaticula*) [A137] / Grey Plover (*Pluvialis squatarola*) [A141] /

Knot (*Calidris canutus*) [A143] / Sanderling (*Calidris alba*) [A144] / Dunlin (*Calidris alpina*) [A149] / Bar-tailed Godwit (*Limosa lapponica*) [A157] / Redshank (*Tringa totanus*) [A162] / Black-headed Gull (*Chroicocephalus ridibundus*) [A179] / Roseate Tern (*Sterna dougallii*) [A192] / Common Tern (*Sterna hirundo*) [A193] / Arctic Tern (*Sterna paradisaea*) [A194] / Wetland and Waterbirds [A999]

North Bull Island SPA (004006) - c. 8.49 km from the site.

CO – To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. Qualifying Interests/Species of Conservation Interest: Light-bellied Brent Goose (*Branta bernicla hrota*) [A046] / Shelduck (*Tadorna tadorna*) [A048] / Teal (*Anas crecca*) [A052] / Pintail (*Anas acuta*) [A054] / Shoveler (*Anas clypeata*) [A056] / Oystercatcher (*Haematopus ostralegus*) [A130] / Golden Plover (*Pluvialis apricaria*) [A140] / Grey Plover (*Pluvialis squatarola*) [A141] / Knot (*Calidris canutus*) [A143] / Sanderling (*Calidris alba*) [A144] / Dunlin (*Calidris alpina*) [A149] / Black-tailed Godwit (*Limosa limosa*) [A156] / Bar-tailed Godwit (*Limosa lapponica*) [A157] / Curlew (*Numenius arquata*) [A160] / Redshank (*Tringa totanus*) [A162] / Turnstone (*Arenaria interpres*) [A169] / Black-headed Gull (*Chroicocephalus ridibundus*) [A179] / Wetland and Waterbirds [A999]

#### 8.9 Consideration of Impacts on South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA:

- There is nothing unique or particularly challenging about the proposed urban development, either at construction phase or operational phase.
- The Camac River is located adjacent the northern boundary of the site. During the operational stage surface water from the proposed development will drain to an existing public surface water sewer, this sewer drains to the Camac river catchment, which drains to the River Liffey, and in turn drains to the Liffey Estuary Lower transitional waterbody, and then flows into Dublin Bay coastal waters. According to

the EPA, water quality of the Liffey Estuary transitional waterbody and Dublin Bay coastal waterbody is classified as 'moderate' and 'good' respectively and Dublin bay coastal waterbody has a WFD risk score of 'not at risk'. The surface water pathway creates the potential for an interrupted and distant hydrological connection between the proposed development and European sites in the inner section of Dublin Bay. During the construction phase standard pollution control measures are to be used to prevent sediment or pollutants from leaving the construction site and entering the water system. During the operational phase clean, attenuated surface water will discharge from the site to a public sewer in small and controlled volumes. (See Engineering Services Report and Outline Construction & Waste Management Plan). The pollution control measures to be undertaken during both the construction and operational phases are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites. In the event that the pollution control and surface water treatment measures were not implemented or failed, I remain satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in Dublin Bay can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the application site from Natura 2000 sites in Dublin Bay (dilution factor).

- The foul discharge from the proposed development would drain, via the public network, to the Ringsend WWTP for treatment and ultimately discharge to ABP-Dublin Bay. There is potential for an interrupted and distant hydrological connection between the site and sites in Dublin Bay due to the wastewater pathway. I consider that the foul discharge from the site is negligible in the context of the overall licenced discharge at Ringsend WWTP, and thus its impact on the overall discharge would be negligible.
- The EPA is the competent authority in respect of issuing and monitoring discharge licences for the WWTP at Ringsend and the license itself is subject to the provisions of the Habitats Directive. Despite capacity issues at Ringsend WWTP the Liffey Estuary and Dublin Bay are currently classified by the EPA under the WFD 2010-2015 as being of 'unpolluted' water quality status. The 2019 AER for the Ringsend WWTP notes that discharges from the WWTP does not have an observable

negative impact on the water quality in the near field of the discharge and in the Liffey and Tolka Estuaries. The WFD characterisation process concluded that the Ringsend WWTP is a significant pressure on the Liffey Estuary Lower Water Body (EPA 2018). However, the pollutant content of future discharges to Dublin Bay is likely to decrease in the longer term due to permissions granted for upgrade of the Ringsend WWTP (2019). It is also an objective of the GDSDS and all development plans in the catchment of Ringsend WWTP to include SUDS within new developments and to protect water quality in the receiving freshwater and marine environments and to implement the WFD objective of achieving good water quality status in Dublin Bay.

On the basis of the foregoing, I conclude that the proposed development will not impact the overall water quality status of Dublin Bay and that there is no possibility of the proposed development undermining the conservation objectives of any of the qualifying interests or special conservation interests of European sites in or associated with Dublin Bay. In relation to in-combination impacts, given the negligible contribution of the proposed development to the wastewater discharge from Ringsend, I consider that any potential for in-combination effects on water quality in Dublin Bay can be excluded. Furthermore, other projects within the Dublin Area which can influence conditions in Dublin Bay via rivers and other surface water features are also subject to AA. In this way in-combination impacts of plans or projects are avoided.

- It is evident from the information before the Board that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on the South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA and that Stage II AA is not required.

#### 8.10 AA Screening Conclusion

It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on South Dublin Bay SAC (000210), North Dublin

Bay SAC (000206), South Dublin Bay and River Tolka Estuary SPA (004024), North Bull Island SPA (004006), or any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 9.0 Recommendation

9.1. I recommend refusal based on the following reasons.

## 10.0 Reasons and Considerations

1. The relevant standards for assessment of quality and layout of apartment developments is set down under the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (December 2020). Under Section 3.8 of the guidelines it stated that to safeguard higher standards "the majority of all apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%". The proposal fails to adhere to this standard with the proposed development contrary to the recommendation of the guidelines and providing for a development of insufficient quality in terms of safeguarding higher standards. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the excessive scale, bulk and unsympathetic design of the proposed development, such would have disproportionate and visually obtrusive impact in the surrounding area. The proposed development would be detrimental to the visual amenities and character of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the excessive, scale and proximity of development to existing residential properties, in particular Block B, the proposal has the potential to have an overbearing impact on adjoining properties due to the proximity, height and

positioning of balconies relative to existing residential properties, in particular the dwellings at Old Kilminaham to the south west of the site, along Lady Lane and Millbrook Terrace. The proposed development would have an overbearing impact, result in a reduced level of privacy and be seriously injurious to existing residential amenity. The proximity, scale and orientation of Block B relative to the adjoining site to east could impact on the future development potential of the adjoining site and its development to a similar degree. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

4. Having regard to the location of the site in Flood Zone B, which is undefended and an area that has history of flood incidences, the Board is not satisfied, on the basis of the information lodged with the planning application and the appeal, that the development appropriately mitigates the risk of flooding on the site and the development would not give rise to a heightened risk of flooding either on the proposed development site itself, or on other lands. It is considered that a development of this scale on this site is premature pending the outcome of the Camac River Flood Alleviation Scheme.

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Colin McBride  
Planning Inspector

11<sup>th</sup> November 2021