



An
Bord
Pleanála

Inspector's Report ABP-309748-21

Development	Demolition of an industrial/office building and construction of a 4 and 5 story block of apartments consisting of 9 apartments.
Location	17-21, Church Street East, East Wall, Dublin 3.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3409/20
Applicant(s)	Kenneth Large
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Parties vs. Grant
Appellant(s)	1. Ciaran Noonan 2. Ger Philpott
Observer(s)	Ger Philpott
Date of Site Inspection	10 th September 2021
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The site is located along Church Street East, at the southern end of the East Wall area of Dublin's Docklands. It has a stated site area of 267m², all of which is covered by an existing 2-storey industrial/office building.
- 1.2. To the west of the site is a fenced-off area at the junction with Abercorn Road. This site has recently been cleared, presumably in connection the recent permissions for the site (see section 4.0 for details). To the south of the site are the rear private gardens associated with the 2-storey terraced properties along Abercorn Road, and to the east of the site is No. 16A Church Street, a brick-faced 2-storey house with extension and garden to the rear. Further to the east is a 4-storey element (including basement and setback 3rd floor) of the larger 11-storey Canon Hall apartment complex which wraps around East Road and onto Sheriff Street Upper. The opposite (northern) side of Church St East is formed by a terrace of 2-storey dwellings, which reduces to single storey properties at the eastern end of the street.
- 1.3. In the wider context, the East Wall area (to the north of the site) is a long-established residential neighbourhood consisting of 2-storey dwellings and various commercial and community facilities. However, the area immediately surrounding the appeal site is largely cut-off from the wider East Wall neighbourhood by railway lines. The Royal Canal and the Docklands Railway Station are located further west of the appeal site.
- 1.4. The wider area to the east and south of the site is undergoing significant transformation. On former commercial sites to the eastern side of 'East Road', permission has been granted under the SHD process for the construction of 702 apartments (ABP Ref. 308827-20) and 554 apartments (ABP Ref. 304710-19). Lands to the southern side of Sheriff Street Upper are located within the North Lotts and Grand Canal Dock Strategic Development Zone (SDZ). The SDZ lands are subject to a number of significant commercial and residential permissions, with a number of schemes completed or under construction.
- 1.5. The site is within walking distance of the city centre and is also in close proximity to the Luas Red Line and Docklands Rail Station. A proposed 'BusConnects' Orbital Route - the N4 – would run along East Road to the east of the appeal site.

2.0 Proposed Development

2.1. In summary, the proposed development (as amended by a further information response) comprises the following:

- Demolition of existing buildings on site (total area c. 331 sq.m.)
- Construction of 4 and 5-storey apartment building (total internal area 716 sq.m.) consisting of:
 - 4 no. one-bedroom apartments
 - 3 no. two-bedroom apartments
 - 2 no. studio apartments
- A rooftop terrace (50 sq.m.)
- 2 no. bicycle stores accommodating a total of 20 bicycle spaces.
- Bin store at ground floor level (10.8 sq.m.)

2.2 Foul waste will connect to the existing combined public sewer on Church Street East. The surface water drainage system will use SUDS techniques including a flow control device; underground attenuation storage tank; and interception volume. Surface water will be discharged to the foul system prior to connection to the combined sewer on Church Street East.

2.3 The maximum height of the proposed building occurs around the central service/stair core (16.560m). Either side of this, a 5-storey element rises to 15.410m and the 4-storey element rises to 12.360m (with roof terrace above). External wall finishes consist mainly of a contrast of red and buff colour brick, together with a zinc wall/roof finish at 4th floor level.

3.0 Planning Authority Decision

3.1. Decision

By order dated 23rd February 2021, Dublin City Council issued notification of the decision to grant planning permission subject to 15 standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planner's Reports are the basis for the Planning Authority decision. The initial report can be summarised as follows:

- The proposal is consistent with the 'Z1' zoning and planning history for the site and is considered an appropriate use.
- The proposal is above Development Plan standards for plot ratio and site coverage. However, the Development Plan allows for exceptions and the proposal may be acceptable having regard to its inner-city location; the corner location on a relatively wide junction; and the existing streetscape profile.
- The building height does not exceed the maximum for inner city residential (24m). While the proposed height is a significant increase on the existing site and neighbouring residences, it should be considered in the context of the scale permitted on the adjoining site (P.A. Ref. 3362/19).
- While the overshadowing impact of the development has been assessed by the applicant, no information on daylight impacts for the neighbouring properties has been submitted.
- In comparison to a previously permitted scheme, the proposal would provide a welcomed vertical emphasis. A significant quantity of render is not considered a durable material and the eastern side elevation would present a large, blank and unarticulated appearance.
- The proposed mix of units is acceptable having regard to 'Sustainable Urban Housing: Design Standards for New Apartments' and the allowances for the infill nature of the site and the limited size/number of units proposed. The proposal also satisfactorily complies with standards for floor area; dual aspect; private/communal open space; and floor to ceiling heights.
- There are concerns about overlooking of adjoining properties to the south.

In accordance with the conclusions and recommendation of the Planner's Report, a Further Information Request was issued which addressed the concerns outlined

above, as well as matters raised by the Transportation Planning and Drainage Divisions.

In the planner's subsequent report, the Further Information request response was deemed to satisfactorily address the above issues, subject to conditions. A grant of permission was recommended in accordance with the terms of the DCC notification of decision.

3.2.2. Other Technical Reports

Transportation Planning Division: The report of 29th October 2020 requested further information including a Residential Mobility Management Plan that supports zero car parking; bicycle parking design proposals; and a Servicing Operation Plan. The subsequent report (12th February 2021) stated that the Further Information response was satisfactory and there was no objection subject to conditions.

Engineering Department – Drainage Division: The report of 4th November 2020 stated that the proposed FFL of 1.34m OD Malin is not acceptable and requested that a site-specific flood risk assessment be submitted. The subsequent report (12th February 2021) stated that the Further Information response was satisfactory and there was no objection subject to conditions.

3.3. Prescribed Bodies

Transport Infrastructure Ireland: No objections subject to conditions.

Iarnrod Eireann: No objections subject to conditions.

3.4. Third-Party Observations

A number of submissions were made in relation to the development. The issues raised are largely covered in the grounds of this appeal. Some additional issues were raised and can be summarised as follows:

- Overlooking and demolition/construction work impacts on No. 16A Church Street East.
- Boundary details and construction impacts on the stability and amenity of properties along Abercorn Road.

- Overlooking and daylight/sunlight impacts for properties along Abercorn Road
- Potential impacts on water/wastewater infrastructure in the area.
- Clarification regarding site ownership and liaison.

4.0 Planning History

4.1 The following applies to the appeal site:

P.A. Ref. 3152/17: On an enlarged site including 22-23 Church Street East (to the west of the appeal site), permission granted (10th November 2017) for the demolition of existing buildings and the construction of 14 no. apartments in a 3 to 4-storey building.

4.2 A number of subsequent permissions were granted separately for the adjoining site to the west of the appeal site (i.e. No.'s 22-23 Church Street East, including part of No. 21) as follows:

P.A. Ref. 4084/18: Permission granted (15th January 2019) for the demolition of existing buildings and the construction of 9 no. apartments in 4-storey building.

P.A. Ref. 2493/19: Permission granted (17th June 2019) for the demolition of existing buildings and the construction of 7 no. apartments in a 4-storey building.

P.A. Ref. 3362/19: Permission granted (27th September 2019) for the demolition of existing buildings and the construction of 9 no. apartments in a 5-storey building.

5.0 Policy and Context

5.1. National Policy / Guidance

5.1.1 The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains a number of policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints;
- NPO 4 promotes attractive, well-designed liveable communities;
- NPO 6 aims to regenerate cities with increased housing and employment;
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location

5.1.2 Following the theme of ‘compact urban growth’ and NPO 13, **Urban Development and Building Heights, Guidelines for Planning Authorities (2018)**, hereafter referred to as ‘the Building Height Guidelines’, outlines the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF.

5.1.3 **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)**, hereafter referred to as ‘the Sustainable Residential Development Guidelines’, sets out the key planning principles which should guide the assessment of planning applications for development in urban areas.

5.1.4 **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)**, hereafter referred to as ‘the Apartments Guidelines’, sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking.

5.1.5 **The Planning System and Flood Risk Management Guidelines (DoEHLG, 2009)**, hereafter referred to as ‘the Flood Risk Guidelines’, require the planning system to avoid development in areas at risk of flooding unless appropriately justified and mitigated; adopt a sequential approach based on avoidance, reduction and mitigation; and incorporate flood risk assessment into the decision-making process.

5.2. Development Plan

- 5.2.1 The site is zoned 'Z1 Sustainable Residential Neighbourhoods' in the Dublin City Development Plan 2016-2022, the objective for which is '*To protect, provide and improve residential amenities.*' Residential use is a 'Permissible Use' within this zoning objective.
- 5.2.2 Section 4.5.3.1 relates to urban density and promotes sustainable density, compact development, and the efficient use of urban land. Chapter 5 outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity.
- 5.2.3 Chapter 16 sets out detailed policies and standards in respect of development proposals within the city. Section 16.2 "Design, Principles & Standards" provides design principles outlining that development should respect and enhance its context.
- 5.2.4 Section 16.2.2.2 discusses 'Infill Development' i.e. gap sites within existing areas of established urban form. It is particularly important that such development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape.
- 5.2.5 Section 16.7.2 includes height limits for development, including a 24m restriction for development in the Inner City and within 500m of rail hubs.

5.3. Natural Heritage Designations

The nearest designation to the site is the Royal Canal pNHA (c. 250m to the west). In terms of Natura 2000 sites, the South Dublin Bay and River Tolka Estuary SPA is located approximately 1km to the northeast, while South Dublin Bay SAC is located approximately 2km to the southeast. There are several other Natura 2000 sites in the wider Dublin Bay area to the east.

5.4. Environmental Impact Assessment - Preliminary Examination

- 5.4.1. With regard to EIA thresholds, Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,

- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

- 5.4.2. It is proposed to construct a residential development containing 9 dwelling units. Therefore, the number of dwellings proposed is well below the threshold of 500 dwelling units. The site has an overall area of c. 0.0267 ha and is not located within a ‘business district’. The site area is therefore well below the applicable threshold of 10 hectares.
- 5.4.3. The site is entirely developed with existing commercial buildings and is largely surrounded by residential development. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. It is also noted that the site is not located within an Architectural Conservation Area or a Zone of Archaeological Interest and is not within close proximity to Protected Structures. The proposed development is not likely to have a significant effect on any European Site (as outlined in Section 7.9 of this Report). There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors).
- 5.4.4. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing/mixed-use development in the area. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Dublin City Council, upon which its effects would be minimal.
- 5.4.5. Having regard to the nature and scale of the proposed development and the location and brownfield nature of the subject site, together with the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6.0 The Appeal

6.1. Grounds of Appeal

The decision of DCC to grant permission has been appealed by two third parties (Ciaran Noonan & Ger Philpott). Their grounds of appeal are similar and can be summarised under the following headings:

Sunlight / Daylight

- The applicant's initial 'Shadow Assessment' did not consider the properties on the opposite side of the street.
- The 'Revised Shadow Report' (26 January 2021) is incomplete, vague, and difficult to understand. No specific houses are identified, and the wrong numbers are used for Church Street East and it is inaccurately represented. It should be reviewed for compliance with BRE Guidelines in relation to its scope, methodologies and objectivity.
- One of Mr Noonan's windows (W3) has failed the applicant's analysis.
- The actual effects would be much worse than those predicted by the applicant and no assessment has been completed for 1st floor windows.
- Several occupants on Church Street East have rights to light as an easement property right by virtue of living in the house for more than 20 years (or 12 years under Land and Conveyancing Law Reform Act 2009), or by grant or other legal measures. These rights exist regardless of a planning decision and infringement must be given real consideration.
- The applicant's VSC analysis of window 'W4' (Mr Philpott's kitchen/living room) fails the BRE standards in a way that is not 'marginal'. Compliance with standards should apply to all properties. Taken together with a 11% loss of APSH and a 50% reduction in sunlight during the winter months, this constitutes a very significant and unacceptable adverse effect on residential amenity. In the absence of modifications, the Board should refuse permission.
- The proposal is in breach of the 'Sustainable Residential Development Guidelines' requirements to follow BRE Standards.

- A rationale for accepting reduced standards has not been provided by the applicant or the planning authority.

Height / visual impacts

- The height, scale and massing is inappropriate in the context of the adjoining residential properties which are zoned 'Z2' residential conservation areas.
- No 'visual impact assessment' has been submitted and the planning authority has not considered the impact and overbearing nature of the development on existing houses.
- Old terraces such as Church Street East create valuable pockets of character which give the area a distinctive personality.
- The scale, design and height is in material contravention of Development Plan policies and objectives (Policies CHC1, SN2, and sections 16.2.1, 16.2.2.1, 16.2.2.2 and 16.10).

Appropriate Assessment

- The issue of Appropriate Assessment (including 'screening') has not been adequately addressed.
- The site is located within 5km of four Natura 2000 sites (South Dublin Bay and River Tolka Estuary SPA, North Dublin Bay SAC, South Dublin Bay SAC and North Bull Island SPA) and this adds to the amenity of the area.
- The site is located in close proximity to the South Dublin Bay and River Tolka Estuary SPA. There is potential for hydrological pathways and an indirect linkage through wastewater disposal to the Ringsend WWTP. Bird species could also fly from the SPA boundaries and encounter the proposed development.

Other issues

- The development will significantly impact on the privacy of properties on Church Street East, including overlooking from the proposed balconies.
- The cumulative impact with other developments in the area will gradually erode and transform the local community.

- The proposed density is not particularly high and the argument that it is helping to solve the housing shortage is overstated.
- No additional parking is provided. This will increase the already significant pressure for parking in the area.
- No Construction Management Plan has been submitted to address dust, noise, dirt, nuisance, and traffic impacts during the construction phase.
- The applicant's further information was not properly circulated or notified.
- No EIA Screening has been carried out.

6.2. Applicant Response

The applicant's response to the grounds of appeal, compiled by O'Connor Whelan Planning Consultants, is summarised below. It also contains corrections and additions to the 'daylight, sunlight and shadow assessment' report previously submitted as further information.

- The proposed development sits appropriately within the context of existing and permitted development within this 'city block' and provides an appropriate transition.
- The proposed height is significantly lower than that allowable under Development Plan provisions.
- The applicant's and DCC reports have demonstrated that the proposal does not contravene the Development Plan.
- The application has assessed the daylight/sunlight impacts on the windows of 1-8 Church Street East. The rear gardens of these properties would not experience additional overshadowing and no further analysis is needed.
- There was no requirement on the planning authority to involve/notify objectors about the further information response.
- It is agreed that the properties along Church Street East were incorrectly shown in the daylight/sunlight analysis and revised results have been included in the response, which show a minor improvement to daylight/sunlight levels.
- The design underwent various edits to limit daylight/sunlight impacts.

- A daylight/sunlight assessment of 1st floor windows on Church Street East is included in the response and all windows pass the guideline requirements.
- The minor deviations from BRE Standards should not render the proposal undevelopable.
- For the ground floor window of No. 5 Church Street East, the VSC is 17.9% with a change ratio of 0.76, which is close to the guideline target of 0.80 and similar to others in the row. The slightly lower ratio is due to the current lack of development of the applicant's site opposite. Sunlight to this window complies with probable sunlight hours requirements for annual and winter periods. The DCC planner's report considered the degree of failure (originally reported as 75%) as marginal.
- There is no breach in standards as the BRE guidelines are not mandatory and may be interpreted in context.
- The proposal effectively involves a redesign of the previous permission (P.A. Ref. 3152/17), which was subject to AA Screening and a conclusion that AA was not required. There will be no increase in surface water run-off and additional wastewater loading will be extremely minor. Accordingly, no Appropriate Assessment is required.
- There is absolutely no requirement for EIS screening given the small-scale nature of the proposed development.
- Right to light is a legal issue, not a planning issue.
- There are no balconies facing Church Street East. There are 'French doors' for light purposes and these are no different from windows.
- The issue of precedent for further development should not form part of the assessment.
- The proposal provides generous bicycle parking and has been designed to encourage sustainable forms of transport.
- There is no requirement to provide a Construction Management Plan, but the applicant would provide one as a condition of permission.

6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.4. Observations

One of the appellants (Mr Philpott) made an observation on the other 3rd party appeal. The observation supports the appeal but wishes to clarify and state the following regarding the applicant's 'daylight, sunlight and shadow assessment' report (version submitted as further information):

- The ground floor window 'W4' is in Mr Philpott's property (i.e. No. 5 Church Street East), while window 'W5' refers to Mr. Noonan's house (i.e. No. 6 Church Street East).
- Therefore, it is the windows of No. 4 and 5 Church Street which fail the skylight assessment.
- However, it is clear that all houses along this terrace will be extremely adversely affected, including reduced VSC values of 20.2% (for Mr. Noonan's property) and 18.2% (for Mr Philpott's).

7.0 Assessment

7.1. Having inspected the site and examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Zoning & Policy
- Height & Visual amenity
- Standard of residential development proposed
- Overlooking and privacy
- Daylight/Sunlight
- Traffic and transport
- Flooding
- Appropriate Assessment

7.2 Zoning & Policy

- 7.2.1 The proposal involves the construction of a residential development on lands zoned for residential use (Z1) in the Development Plan. Consistent with national policy and guidance, the Development Plan also seeks to encourage the development of underutilised lands in appropriate locations. The existing building on the site is vacant at present and the previous use of the site for industrial/office use would be considered an underutilisation of this attractive inner-city location. Furthermore, having regard to its style and character, the existing building on site is not considered worthy of preservation. Accordingly, I consider that there is no objection in principle to the demolition of the existing buildings and the redevelopment of the site for residential use.
- 7.2.2 A block of 9 apartments is proposed on a stated site area of 0.0267 hectares. While this equates to a high density of c. 337 units per hectare, it must be noted that it is at a very limited scale. The Development Plan (section 16.4) states that sustainable residential densities will be promoted in accordance with the guidance of the 'Sustainable Residential Development Guidelines' and that all proposals for higher densities must demonstrate how the proposal contributes to place-making.
- 7.2.3 The proposed gross floor area of 716m² (excluding the roof terrace) equates to a plot ratio of 2.68:1, which exceeds the indicative Development Plan range for 'Z1' sites of 0.5 – 2.0. The stated site coverage (68.5%) also exceeds the indicative range set out for 'Z1' areas (45% - 60%). The Plan outlines that plot ratio and site coverage standards need to be used in conjunction with other measures and that indicative ranges may be permitted in cases such as adjoining major public transport termini/corridors; redevelopment of areas in need of urban renewal; to maintain existing streetscape profiles; an existing higher plot ratio; or to facilitate the strategic role of institutions.
- 7.2.4 The '*Sustainable Residential Development Guidelines*' recommend that increased densities (minimum 50 per hectare) should be promoted within 500 metres walking distance of a bus stop, or within 1km of a rail stop/station. SPPR 1 of the 2018 guidelines on '*Urban Development and Building Heights*' also supports increased building height and density in locations with good transport accessibility, particularly city cores, and prohibits blanket numerical limitations on building height.

- 7.2.5 The subject site is located within 500 metres walking distance of bus routes (Route No.'s 53 and 151), is within c.450m walking distance from the Spencer Dock LUAS stop, and is within c. 350m from the Docklands commuter rail station. There is also a substantial offer of other community, employment and business services in the wider East Wall/Docklands area. With regard to the other criteria set out in the Development Plan to justify higher plot ratio/site coverage standards, I consider that the underutilised/vacant nature of the site is in need of renewal and that the proposed development would be consistent with the existing and permitted streetscape profile along this southern side of Church Street East.
- 7.2.6 Having regard to its zoning, inner-city location, and convenience in relation to public transport and other services, I consider that the site is suitable in principle for residential development at a higher level of density, plot ratio and site coverage. The suitability of the proposed density, height, and scale will be further assessed on the basis of visual amenity, residential amenity and impacts on surrounding properties.

7.3 Height & Visual Amenity

- 7.3.1 The block ranges from 4 to 5-stories, with a maximum height of c. 16.56 metres above the adjoining road level, which does not contravene the 24-metre height limit for the inner city as per the Development Plan. Furthermore, consistent with the policies outlined in section 7.2 above, section 3 of the guidelines on '*Urban Development and Building Heights*' sets out the principles for the assessment of planning applications, which should adopt a general presumption in favour of increased height in town/city cores and urban locations with good public transport accessibility.
- 7.3.2 Notwithstanding the potential for increased height and density, it is important that any such proposal responds positively to its context and protects the character of an area. In this regard it is important to acknowledge that the character of the area is in transition and that Church Street East effectively lies at the interface between the established and emerging character of the area. The north side of the street has retained the traditional low-rise character of the wider East Wall neighbourhood, whereas the southern side of the street is part of a block that continues to develop in a manner that reflects the ongoing Docklands redevelopment to the south. To the southeast of the appeal site, the Canon Hall residential development rises to 11

storeys, and to the south the Saudi Arabian Cultural Bureau is a similar height (7 office storeys). To the immediate west of the site, permission has been granted for a 5-storey residential development (P.A. Ref. 3362/19). Therefore, while I acknowledge that the older residential properties along Church Street East and Abercorn Road continue to have an influence on the setting of the appeal site, I consider that the prevailing context for the site is formed by the larger scale of development described above (i.e. Canon Hall, the Cultural Bureau, and P.A. Ref 3362/19) and that the proposed development should be assessed within that context.

7.3.3 Section 3.2 of the '*Urban Development and Building Heights*' guidelines sets out the criteria for assessing proposals at the scale of the relevant neighbourhood or street. In summary, it is stated that developments should:

- Respond to the overall natural and built environment;
- Avoid monolithic appearance in terms of form and materials;
- Improve legibility and integrate in a cohesive manner;
- Contribute to the mix of uses and/or building/dwelling typologies.

7.3.4 Development along the southern side of Church Street East is currently in various states and styles. As previously mentioned, the appeal site consists of a vacant building and the adjoining site to the west has been cleared, both of which detract from the character and amenity of the area. No. 16A to the east is a more traditional 2-storey brick house, while further east is the lower element of Canon Hall consisting of a 4-storey modern building with a height of c. 11.5m (including a setback top floor and 'basement' level). High-rise development along Sheriff Street Upper forms the backdrop to the south of the site.

7.3.5 It is proposed to continue the 5-storey ridge height of the permitted development to the west, with the 4th floor level being setback c. 1.5m from the front façade. The proposal will step down to 4-storeys at the eastern end of the building to reflect the ridge height of the Canon Hall development further to the east. The proposed elevation treatment is consistent with the character of Canon Hall and the permitted development to the west, and a variety of finishes and ridge heights are proposed to avoid a monolithic appearance.

- 7.3.6 Having regard to the vacant/underutilised nature of the existing building on site and its non-conforming industrial/office use, I consider that the proposed development would improve the legibility of the area and would integrate more cohesively with the predominant residential uses in the area. The proposal would provide a variety of apartment types which would contribute to an appropriate mix when considered in the context of the traditional dominance of terraced houses in the East Wall area.
- 7.3.7 In conclusion, I consider that the proposed development is of an acceptable height, scale and design, and would not seriously detract from the character and visual amenity of the area. I acknowledge the provisions of the Development Plan regarding the protection of local character (including policies CHC1, SN2, and sections 16.2.1, 16.2.2.1, 16.2.2.2 and 16.10) but I do not consider that the proposed development would contravene these provisions and that it would provide an appropriate transition between the established and emerging character of the area. Accordingly, I have no objection in relation to height, scale and design of the proposed development and its impacts on the character and amenities of the area.

7.4 Standard of residential development proposed

Mix of Units

- 7.4.1 It is proposed to provide 4 no. 2-bed units, 3 no. 1-bed units and 2 no. studio units. While SPPR 1 of the Apartments Guidelines sets out a requirement for a mix of apartment sizes / types (including a maximum 50% for 1-bed/studio units), SPPR 2 clarifies that urban infill schemes, on sites of up to 0.25 hectares where up to 9 residential units are proposed, shall not be subject to a restriction on dwelling mix provided no more than 50% of the development comprises studio-type units. The appeal site is less than 0.25 hectares and no more than 9 units are proposed, only 22% of which are studio units. Accordingly, I have no objection to the dwelling mix proposed.

Floor areas and dimensions

- 7.4.2 I have reviewed the gross floor areas for each unit and I am satisfied that they meet the minimum areas as per the Apartments Guidelines. There is no requirement for the majority of units to exceed the minimum areas by 10% as per section 3.8 of the Guidelines given that the proposed development involves less than 10 units.

7.4.3 The internal room areas and widths also comply with the minimum requirements for living/kitchen/dining spaces, bedrooms, and storage as set out in Appendix 1 of the Guidelines. The ceiling height for the main living spaces are 2.7m at ground floor level. Above ground floor, the heights are mainly 2.6m and a minimum of 2.4m. I am satisfied that this complies with the provisions of the Apartments Guidelines.

Aspect

7.4.4 The Apartments Guidelines require that a minimum of 33% dual aspect units be provided in central and accessible urban locations, albeit that this requirement can be relaxed on urban infill sites of up to 0.25ha. With the exception of the ground-floor studio unit, all proposed units are dual-aspect. All units, including the ground-floor studio unit, have the benefit of an attractive southwest aspect to the rear. Accordingly, I have no objections in this regard.

Amenity Space

7.4.5 Each of the proposed units has direct access off living areas to a private amenity space that exceeds the minimum requirements of the Apartments Guidelines, with the spaces for the 1-bed and studio units significantly exceeding the requirements. In terms of communal amenity space, based on Appendix 1 of the Apartments Guidelines, the proposed development requires a minimum communal open space area of 49 sq.m., albeit that section 4.12 of the Guidelines also allows for relaxation of this requirement in the case of small urban infill schemes such as this case. The proposed development provides a communal area of 50 sq.m. at the rooftop level which will be accessible to all units. The Guidelines allow for the provision of rooftop gardens and I consider that proposals are acceptable in this case having regard to the limited scale of the development and given that the majority of proposed units are 1-bed/studio type and unlikely to cater for families.

Communal Facilities

7.4.6 A bin store is proposed at ground floor level with direct access onto the street. The store has adequate capacity to cater for the 3-bin system and has a louvred door which will adequately ventilate the space. It is easily accessible for the occupants of the units and waste collectors and I have no objections in this regard. The communal access and stair/lift cores are also appropriately designed and laid out and are acceptable in accordance with the provisions of the Apartments Guidelines.

Conclusion on residential standards

7.4.7 Having regard to the above, I am satisfied that the proposed development provides a suitable mix of units with appropriately designed and sized internal and external spaces. The development generally benefits from an attractive dual aspect and the design and extent of communal facilities is acceptable given the limited scale of the proposed development. Accordingly, I am satisfied that it would provide a suitable standard of residential amenity for the prospective occupants. The issue of daylight/sunlight within the proposed development is addressed further in section 7.6 of this report.

7.5 Overlooking and privacy

7.5.1 I note that one of the appeals raises concerns about overlooking of properties along the northern side of Church Street East from balconies to the front of the proposed development. Consistent with the applicant's response to the appeal, I am satisfied that the northern façade of the development contains several 'French doors' which do not access onto balconies and effectively serve as large bedroom windows. Accordingly, I do not consider that these openings would lead to significant overlooking of surrounding properties to the north. Otherwise, the 4th floor private/communal terrace areas will be at a higher level than the properties on Church Street East and will not contribute to significant overlooking concerns.

7.5.2 To the east of the site is No. 16A and its garden to the rear. The proposed development does not include east-facing windows and screening will be provided at the eastern side of the private and communal spaces. Accordingly, I am satisfied that no overlooking impacts will adversely affect the privacy and amenity of No. 16A or other properties to the east of the site. The site to the west is currently undeveloped and screening proposals on the western side of balconies are included to protect the permitted scheme on that site (P.A. Ref. 3362/19). Accordingly, I have no objections in relation to overlooking of the site to the west.

7.5.3 To the south of the site lies the rear facades and gardens of the houses along Abercorn Road and I note that the planning authority's further information request raised concerns about overlooking of these properties. In response, the applicant has omitted the 4th floor south-facing balcony and replaced this with a triangular oriel windows with obscured glazing facing the Abercorn Road properties. Additional

timber louvre screening is also proposed to the 3 balconies at the eastern end of the rear elevation. I consider that the design and mitigations measures of the proposed development will mean that any overlooking will be adequately distanced, obscured and angled so as to prevent any significant direct overlooking of the rear façade windows of the Abercorn Road properties. However, notwithstanding the mitigation measures, there would still be some degree of overlooking of the rear gardens associated with these properties.

7.5.4 I acknowledge that the provisions of the Development Plan seek to protect the amenities of existing properties and that section 16.10.1 specifically seeks to minimise overlooking from balconies. However, in light of the suitability of the site for redevelopment and having regard to the constrained urban infill nature of the site and the desirability of a south-facing aspect for the proposed living rooms/balcony areas, it is difficult to see how overlooking impacts could reasonably be further minimised in this case without significantly detracting from the overall quality of the scheme. Furthermore, it must be acknowledged that the proposed arrangement of screened south-facing balconies is consistent with that already permitted on the adjoining site to the west. Therefore, having regard to this inner-city location and the need to achieve higher densities in accessible locations in accordance with the principles of the NPF, and having regard to the emerging pattern and scale of existing and permitted development, I consider that the overlooking impacts would not be exceptional for inner-city development and, on balance, are acceptable in this case.

7.6 Daylight/Sunlight

Policy

7.6.1 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 planning authority or An Bord Pleanála 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.

- 7.6.2 The Sustainable Urban Housing Design Standards for New Apartments Guidelines (2020) also highlight the importance of provision of acceptable levels of natural light in new apartment developments, which should be weighed up in the context of the overall quality of the design and layout of the scheme and the need to ensure an appropriate scale of urban residential development. It states that planning authorities *'should have regard'* to these BRE or BS standards when quantitative performance approaches are undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision. Again, where an applicant cannot fully meet these daylight provisions, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting.
- 7.6.3 The Sustainable Residential Development Guidelines acknowledge that orientation of the dwelling and its internal layout can affect levels of daylight and sunlight and will influence not only the amenity of the occupants but the energy demand for heat and light. It states that the efficiency gains derived from passive solar layouts can be enhanced by designing individual dwellings so that solar collection is maximised, i.e. when living rooms, dining rooms and main bedrooms have a southerly aspect. In relation to adjoining properties, it states that overshadowing will generally only cause problems where buildings of significant height are involved or where new buildings are located very close to adjoining buildings. It states that planning authorities should require that daylight and shadow projection diagrams be submitted in all such proposals and the recommendations of BRE or BS guidance *'should be followed in this regard'*.
- 7.6.4 The Development Plan also highlights the value of daylight and sunlight and states that development *'shall be guided by the principles of'* the BRE Guide. It states that a

sunlight/daylight analysis of the different units may be required and modifications to the scheme put in place where appropriate.

- 7.6.5 At the outset I would highlight that the standards described in the BRE guidelines allow for flexibility in terms of their application, with paragraph 1.6 stating that *‘Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design’*. It notes that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate etc., and states that industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and arrangement of open space, and these factors will vary from urban locations to more suburban ones.

Information & Assessment

- 7.6.6 While the original application included a ‘Shadow Assessment’ of the impact of the development on neighbouring properties to the east, west and south, the applicant’s further information response included an expanded ‘Sunlight, Daylight & Shadow Assessment’ to include properties to the north of the site. In response to the appeal the applicant has corrected and added to the assessment of properties to the north along Church Street East. I consider the amendments accurately reflect the existing properties and I will consider these amendments in my assessment.
- 7.6.7 The assessment has been carried out by Chris Shackleton Consulting and has been prepared in accordance with the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ and BS 8206 ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’. The applicant has not carried out any assessment of the daylight/sunlight standards to be provided within the proposed development itself. This is addressed further in section 7.6.9 below.
- 7.6.8 I have considered the reports submitted by the applicant and have had regard to BRE 2009 – 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). I acknowledge the publication of the updated British Standard (BS EN 17037:2018 ‘Daylight in Buildings), which replaced the 2008 BS in May 2019 (in the UK) but I consider that this updated guidance does not have a material bearing on the outcome of the assessment and that the relevant guidance

documents remain those referred to in the Urban Development and Building Heights Guidelines. I have carried out a site inspection and had regard to the interface between the proposed development and its surroundings, as well as the third-party appeals which have raised concerns in relation to daylight and sunlight.

Standards within the proposed development

- 7.6.9 As previously outlined, the applicant has not submitted any assessment of the daylight/sunlight levels available for the internal and external spaces within the proposed development. However, having regard to the provisions of the Development Plan and the Section 28 guidance outlined in paragraphs 7.6.1 to 7.6.4 above, I do not consider that a daylight/sunlight assessment of the proposed units is a mandatory requirement in this case. To that end, the application does not rely on the 'material contravention' provisions in SPPR 3 of the Building Height Guidelines and, accordingly, there is no mandatory requirement to demonstrate compliance with the BRE or BS standards. I acknowledge that the Apartments Guidelines recommend consideration of the standards when undertaken by development proposers, but do not require that assessments must be undertaken. And while section 7.2 of the Sustainable Residential Development Guidelines recommends following the BRE or BS standards in relation to impacts on neighbouring properties, it does not require an assessment for the proposed development itself. Finally, the Development Plan states only that a sunlight/daylight analysis of the different units may be required, but not that it is mandatory.
- 7.6.10 In the absence of an assessment, I have considered the specifics of the design and layout of the development and I note that all but one (i.e. ground floor studio) of the units are dual aspect; all living/kitchen/dining areas benefit from a southwest aspect; all but one (i.e. top-floor studio) of the private amenity spaces benefit from a southwest aspect; all combined living areas and bedrooms are served by extensive glazing; the ceiling heights generally exceed 2.6m; there is no obstructive high-rise development in close proximity to the south or north of the site; and the rooftop communal space will have good access to sunlight/daylight. The Apartments Guidelines acknowledge that the above factors effectively influence the daylight/sunlight levels within proposed developments. Given that these design factors have been well addressed by the design team, I am satisfied that the

proposed development will provide units with a good level of daylight/sunlight and that no further assessment is required in this regard.

Impacts on neighbouring properties

- 7.6.11 The impact of the proposed development on the daylight/sunlight available to surrounding properties is one of the main grounds of appeal in this case, particularly in relation to the properties on the opposite (northern) side of Church Street East. The BRE guide acknowledges that, in designing new development, it is important to safeguard the daylight to nearby buildings and I note that the Development Plan also outlines the need to avoid excessive impacts on existing properties.
- 7.6.12 The applicant's assessment (as amended in the appeal response) contains a 'light from the sky' (VSC) and sunlight (APSH and WPSH) analysis for the windows of surrounding properties. It also includes a shadow/sunlight analysis of impacts of the open spaces/gardens of neighbouring properties.
- 7.6.13 In general, Vertical Sky Component (VSC) is a measure of the amount of sky visible from a given point (usually the centre of a windows) within a structure. The BRE guidelines state that a VSC greater than 27% should provide enough skylight and that any reduction below this level should be kept to a minimum. If the VSC, with the new development in place, is both less than 27% and less than 0.8 times its former value, occupants of the existing building would notice the reduction in the amount of skylight.
- 7.6.14 Of the 37 windows assessed under existing conditions, I note that only 14 (or 38%) exceed the recommended 27% VSC standard. The majority of these windows are the 1st floor bedroom windows on the northern side of Church Street East. With the proposed development in place, the assessment predicts that 4 of the windows would retain a VSC greater than 27%. However, as per the BRE guidance, the ratio of change must also be considered to assess the impact on properties. In this regard, it is predicted that only 3 (or 8%) of the windows will experience a reduction to less than 0.8 times their former value. This includes a 1st floor window (W7) to the rear of Abercorn Road and two ground floor windows (W4 & W5) on Church Street East. It should be noted that W4 serves house no. 5 (Mr Philpott's property) and W5 serves house no. 6 (Mr Noonan's property). The predicted change ratios for these 3 windows are 0.78 (W7), 0.76 (W4), and 0.77 (W5).

7.6.15 Consistent with the BRE guidance about the flexible application of standards, I note that section 2.2.3 of the guide confirms that the numerical values given regarding daylight impacts on existing buildings are purely advisory, and that different criteria may be used based on the requirements for daylighting in an area viewed against other site layout constraints. Having regard to this flexibility, I consider that the number of windows experiencing a reduction to less than 0.8 times the former value (i.e. 3 or 8%) is a relatively minor proportion, and furthermore, that the extent to which those windows are below the standard is marginal (i.e. ranging from 0.76 to 0.78). I acknowledge that further assessment on the 'working plan' areas of rooms can be carried out in such circumstances where the layouts of existing rooms are known. That information is not available for the existing properties in this case, and I do not consider that further assessment is required given the marginal nature of the identified shortfalls.

7.6.16 The applicant has also included a sunlight analysis for windows using measurements of annual probable sunlight hours (APSH) and annual probable sunlight hours for the winter period (WPSH). The BRE guide states that living room windows facing within 90° of due south may be adversely affected if the centre of the window receives less than 25% of APSH or less than 5% of WPSH, and receives less than 0.8 times its former sunlight hours during either period, and has a reduction in sunlight received over the whole year greater than 4% of APSH. The applicant has assessed 23 windows for APSH and WPSH, not all of which are living rooms or face within 90° of due south.

7.6.17 The assessment finds that 17 (or 74%) of the existing windows currently comply with the 25% APSH standard and that this would be marginally reduced to 16 windows as a result of the proposed development. However, none of these windows would experience a reduction to less than 0.8 times their former value and, accordingly, the impact would be in accordance with BRE recommendations.

7.6.18 For WPSH, only 9 (or 39%) of the existing windows currently comply with the 5% standard and this would remain unchanged as a result of the proposed development. While the vast majority of windows would be largely unaffected by the development, I note that 5 ground floor windows along Church Street East (i.e. B2 – W1 to W5) would experience a reduction to less than 0.8 times their former value, with 3 of those experiencing a loss of more than 50%. However, these are all southwest-

facing windows that benefit from good sunlight levels and, even with the significant reductions, these windows will still retain 5% WPSH. Accordingly, the impacts would be acceptable in accordance with BRE recommendations.

7.6.19 The applicant has also carried out a shadow/sunlight assessment for the gardens of surrounding properties. The BRE guide recommends that for it to appear adequately sunlit throughout the year, at least half of the space should receive at least 2 hours of sunshine on 21st March. If as a result of new development this cannot be met, and the area which can comply is less than 0.8 times its former value, then loss of sunlight is likely to be noticeable.

7.6.20 The applicant has assessed the existing/permitted spaces to the east, west and south of the site, and has satisfactorily demonstrated that the rear gardens to the north of Church Street East need not be included for further assessment. The results show that none of the existing garden spaces comply with the 50% standard but that any impact from the proposed development on these spaces will be negligible. In relation to the permitted development to the west, the proposed development will generally result in improved levels of sunlight. Ultimately, none of the existing or permitted spaces will experience a reduction to less than 0.8 times its former value and, accordingly, will be in accordance with the BRE guidance.

7.6.21 On a separate but related issue, one of the appeals raises the question of impacts of established rights to light. As the issue of determining rights to light is a matter for the legal courts, I do not consider that the Board is in a position to draw any conclusions in relation to the matters raised.

Conclusions on Daylight/Sunlight

7.6.22 I again highlight that the mandatory application of the BRE standards is not required in this case by the Development Plan or by Section 28 Ministerial guidelines. Consistent with that approach, the BRE guide itself highlights further the need for flexible interpretation in the context of many other design factors.

7.6.23 I acknowledge that no assessment has been submitted for daylight/sunlight standards within the proposed development. However, I consider that the design team has appropriately addressed the requirements through the suitable provisions relating to aspect, openings, and ceiling heights, and I am satisfied that a good standard of daylight/sunlight will be provided within the proposed development.

7.6.24 I am satisfied that the applicant has carried out an assessment of impacts on neighbouring properties and that it has been competently prepared in accordance with the BRE / BS guidance and methodology. While the impacts of the proposed development are generally in accordance with the recommended standards, I acknowledge that daylight levels to 3 existing windows will be reduced to levels less than 0.8 times their former values. However, I am satisfied that this constitutes only a marginal shortfall and that the BRE guidance allows sufficient flexibility in the application of standards. The appeal site is located in a well-connected inner-city area and as previously outlined, increased height and density should be encouraged at such locations in order to achieve wider NPF planning objectives relating to compact development and brownfield redevelopment. Accordingly, I am satisfied that the proposed development is acceptable at this location and that it will not excessively detract from the amenities of surrounding properties by reason of daylight/sunlight impacts.

7.7 Traffic and transport

7.7.1 The applicant's response to the further information request included a Mobility Management Plan and Servicing Operation Plan to support the absence of car-parking; to encourage alternative transport modes; to provide suitable bicycle parking facilities; and to outline servicing operations.

7.7.2 The report outlines that the local pedestrian environment is favourable given its location within a 30 km/h 'Slow Zone' and its proximity to the Royal Canal Greenway, and that the walking catchment (45mins) extends over the city centre and beyond, including large numbers of workplaces and amenities. The existing and proposed cycling infrastructure has also been assessed and the predicted cycling catchment (45mins) almost covers the area within the M50.

7.7.3 The appeal site is located within 500 metres walking distance of bus routes (Route No.'s 53 and 151), is within c.450m walking distance from the Spencer Dock LUAS stop, and is within c. 350m from the Docklands commuter rail station. As part of the BusConnects programme, it will also be served by the new N4 orbital service running along East Road to Blanchardstown and by complementary radial services 71 & 72 connecting East Wall with Drimnagh and Tallaght respectively. The new G-Spine service to Ballyfermot will also terminate at the nearby Spencer Dock. The

public transport catchment (60mins) is estimated to cover the entire area within the M50 and beyond.

- 7.7.4 The report outlines a wide range of workplaces and local amenities within the catchment of the appeal site. An analysis of 2016 Census data also outlines that only 21% of people within this Electoral Division travel to work by driving a car/van, and that 47% of households did not own a car.
- 7.7.5 In the absence of car-parking facilities, 20 no. bicycle parking spaces will be provided for occupants and visitors and mobility requirements shall be managed in accordance with a Mobility Management Plan. Alterations are proposed to the existing footpath/kerb arrangement opposite the proposed bin store in order to enable servicing access.
- 7.7.6 In considering the absence of car-parking facilities, I am conscious of NPO13 of the NPF and the Building Height Guidelines of 2018, which support a performance-driven approach towards land use and transportation. The Apartments Guidelines also outline a default policy that car-parking should be minimised, substantially reduced or wholly eliminated in highly accessible area close to city cores or public transport systems. Section 16.38 of the Development Plan takes a similar approach by applying a maximum allowance of 1 car-parking space per apartment, while allowing for reductions in inner-city areas where other modes of transport are sufficient for the needs of residents.
- 7.7.7 Having regard to the above policy provisions and the accessible inner-city location of the site in close proximity to good walking/cycling and public transport connections, I have no objection to the absence of car-parking within the proposed development. I consider that the proposal will encourage more sustainable modes of transport and will not result in additional traffic or parking congestion at this location. The applicant has provided suitable bicycle parking spaces in lieu of car-parking and has committed to the preparation and implementation of a Mobility Management Plan and a Servicing Operation Plan for the operational stage of the scheme. Accordingly, I have no objection in relation to the traffic and transport impacts relating to the development.

7.8 Flooding

- 7.8.1 The applicant has prepared a Site Specific Flood Risk Assessment as part of the further information response. The report has been prepared by IE Consulting and follows the guidance of the Flood Risk Management Guidelines, the Strategic Flood Risk Assessment for the DCC Development Plan, and the 'Dublin Coastal Flooding Projection Project – Volume 1 – 29th April 2005'.
- 7.8.2 A comprehensive screening exercise has been carried out by the applicant and establishes that the primary flood risk to the proposed development can be attributed to potential tidal/coastal flooding from a tidally influenced section of the River Liffey. Secondary flood risk is attributed to a surcharge/failure of the urban drainage/water supply infrastructure within the site vicinity. The screening/scoping exercise concludes that while the Eastern CFRAM study indicates that the site does not lie within a fluvial or tidal flood zone, there remains a residual risk due to the potential for failure of the Spencer Dock lock gates and a more detailed analysis of tidal flooding scenarios is required.
- 7.8.3 The assessment details a hydraulic modelling exercise which takes into account tidal hydrographs combined with the 1 in 200-year peak water level and the 'Mid-range Future Scenario' for climate change. 'Flood Modeller' software was then combined with a Digital Terrain Model and GIS to identify the floodable cells. The model output indicates that the site falls within a 1 in 200-year tidal flood zone, experiencing flood depths of 0.10m to 0.60m and a maximum level of 1.50m OD. When climate change impacts are included, the depth increases to 0.80m and a maximum level of 1.70m OD. In order to minimise residual risk it is recommended that the finished floor levels in the development are at least 1.75m OD.
- 7.8.4 In terms of pluvial flooding, the report outlines that the site may be affected by a 1% AEP and 0.5% AEP pluvial flooding event within the range of 0.0 to 0.25m. For the most part, ponding of pluvial waters is expected to be contained within existing kerb lines and the risk is considered to be moderate. Secondary flood risk associated with a surcharge/failure of drainage/water supply infrastructure is expected to flow past the site and the risk is considered to be low.
- 7.8.5 Given the location of the site within the 1 in 200-year tidal flood zone the applicant accepts that the site is within Flood Zones A and B as per the Flood Risk Guidelines,

and that a 'Justification Test' is required for this 'highly vulnerable' residential use. In considering the applicant's response to the criteria of the 'justification test' I would state as follows:

1. This point effectively requires that the lands have been appropriately zoned for the proposed use. In this regard I am satisfied that the 'Z1' zoning of the site is appropriate for the proposed use. The lands were also zoned in accordance with the Development Plan which included a SFRA that has taken into account the provisions of the Flood Risk Guidelines.

2 (i). Requires demonstration that the development will not increase flood risk elsewhere and, if applicable, will reduce overall flood risk. The appeal site is already entirely developed, and I am satisfied that there will be no loss of flood storage as the physical footprint of the development remains the same. I consider that the proposed surface SUDS measures will improve the management of surface water within the site.

2 (ii). Requires measures to minimise flood risk to people, property, the economy and the environment. The finished floor level of the proposed development (1.75m OD) has been designed to be at least 0.05m above the 1 in 200-year water level (including provision for climate change). I also note that surface water management and a Flood Evacuation Plan will be implemented on site and I am satisfied that flood risk has been adequately minimised.

2 (iii). Requires measures to ensure that residual risks can be managed to an acceptable level. The applicant proposes that residual risk will be managed by the Flood Evacuation Plan and states that access for emergency services would not be restricted due to the development.

2 (iv). Requires that the development addresses the above in a manner that is consistent with the achievement of wider planning objectives relating to urban design. I have previously outlined that the proposed design and layout is consistent with the wider planning objectives relating to urban design and I do not consider that any of the flood risk measures will conflict with these objectives.

7.8.6 Having regard to the above, I consider that the proposed development satisfactorily addresses the issue of flood risk within the proposed development and that it will not result in an increased risk of flooding in other areas. The proposal is acceptable in

accordance with the 'justification test' of the Flood Risk Guidelines and I have no objection in this regard.

7.9 Appropriate Assessment

- 7.9.1 The DCC Planner's report noted that the appeal site is not within or adjoining any Natura 2000 sites. Having regard to the nature and scale of the proposed development, it concluded that no Appropriate Assessment issues arise; that there would be no likely individual or in-combination significant effects on European Sites; and that a Stage 2 Appropriate Assessment would not be required.
- 7.9.2 The appeal raises concern that AA Screening has not been adequately addressed and that there is potential for impacts on Natura 2000 sites in Dublin Bay as a result of hydrological pathways, wastewater emissions, and the interaction between the proposed development and protected bird species. In response, the applicant has outlined that AA Screening was carried out for a previously permitted development on the site (P.A. Ref. 3152/17) and it was concluded that Appropriate Assessment was not required. It highlights the built-up nature of the site and the absence of any increase in surface water, and states that the additional loadings on the Ringsend WWTP will be extremely minor. The applicant's response concludes that Appropriate Assessment is not required.
- 7.9.3 The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (approximately 1km to the northeast), while South Dublin Bay SAC is located approximately 2km to the southeast. There are several other Natura 2000 sites in the wider Dublin Bay area to the east, including North Bull Island SPA and North Dublin Bay SAC. The site is not, therefore, located within or adjoining any Natura 2000 Sites, and there are no direct pathways between the site and the Natura 2000 network.
- 7.9.4 I am aware that there are potential indirect connections to the Natura 2000 sites within Dublin Bay via watercourses and the wider drainage network, including the Royal Canal c.250m to the west and the Liffey c.400m to the south. There is also an indirect connection via the combined surface water and wastewater network which outfalls to Dublin Bay via the Ringsend WWTP. However, the existence of these

potential pathways does not necessarily mean that potential significant impacts will arise.

7.9.5 There are no watercourses in the immediate vicinity of the site that would provide a pathway to the Natura 2000 network. And while hydrological pathways could theoretically emerge through unplanned events (e.g. flooding), I do not consider this to be likely or that any such impacts would be significant having regard to the separation distance and dilution capacity between the appeal site and the Natura 2000 network.

7.9.6 With regard to surface water, I acknowledge that the site is already developed and that there would be no increase in run-off. The development incorporates appropriate management measures to regulate discharges, and this would likely improve emissions in terms of quantity and quality prior to connection to the combined sewer network. There is also limited potential for surface water contamination during construction works but I am satisfied that best-practice construction management will satisfactorily address this matter.

7.9.7 The surface water and wastewater emissions from the development may result in an increased loading on the Ringsend WWTP. However, given the established industrial/office use of the existing building on site, this may not be the case. In any case, there is known potential for the waters in Dublin Bay to rapidly mix and assimilate pollutants. Therefore, having regard to the limited scale of the development and the associated discharges; the small scale of the site and its established uses; the 'unpolluted' EPA classification of the coastal waters in Dublin Bay and the dilution capacity of these waters; and the capacity of the Ringsend WWTP; I am satisfied that there is no possibility that the additional loading resulting from the development will result in significant effects on European sites within Dublin Bay.

7.9.8 I acknowledge the proximity of the site to Natura 2000 sites and that bird species are included as 'qualifying interests' for these sites. However, having regard to the separation distance of at least 1km and the absence of any suitable habitat within the site and the surrounding area, I am satisfied that there will be no potential for ex-situ impacts for protected bird species in the area.

7.9.9 I am satisfied that any proposals incorporated within the development constitute standard best practice and no mitigation measures are relied upon for Appropriate Assessment screening. Having regard to the above preliminary examination, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

7.10 Other issues

7.10.1 The appeal has raised concern that the applicant's further information submission was not properly circulated or notified. While it was a matter for the planning authority to consider, I am satisfied that the appellants have now had the opportunity to address this information submission through the appeal process. On a similar issue, the Board should note that the applicant's response to the 3rd party appeals was not circulated to the appellants. That response included corrections and additions to the 'Sunlight, Daylight & Shadow Assessment (Impact Neighbours)' submitted at further information. Accordingly, the Board may wish to consider circulation of this information in accordance with section 131 of the Act of 2000. However, I would say that the revised information simply clarifies the correct representation of the existing terrace along Church Street East and confirms marginally improved daylight/sunlight levels for these properties. Therefore, it has not had a material or significant influence on my recommendation.

7.10.2 The appeal has raised concern about construction-related impacts including traffic, noise, dust, dirt and other nuisances. I consider that any such impacts will be only temporary and are inevitable and unavoidable aspects of urban development. I am satisfied that the matters can be satisfactorily agreed by conditions requiring the submission of construction management proposals.

7.10.3 It would appear that a Section 97 application (for exemption from Part V provisions) was made at the same time as the planning application was submitted. The planning authority reports do not confirm whether or not an exemption was granted. However, the issue can be satisfactorily addressed through the inclusion of a condition.

8.0 Recommendation

I recommend that planning permission for the proposed development should be **granted** for the reason and considerations, as set out below.

9.0 Reasons and Considerations

Having regard to the inner-city location of the site in close proximity to a wide range of public transport options and community and social facilities, and the provisions of:

- the Dublin City Council Development Plan 2016-2022,
- the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December, 2020,
- the Urban Development and Building Heights - Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December, 2018, and
- the National Planning Framework, which seeks to direct new residential development in cities into built-up serviced areas,

and having regard to the pattern and character of development in the area and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum of development in this accessible urban location, would not seriously injure the amenities of surrounding properties, and would not seriously detract from the character of the area. The development would be acceptable in terms of pedestrian and traffic safety and, having regard to the provisions of provisions of The Planning System and Flood Risk Management Guidelines issued by the Department of Environment, Heritage and Local Government in November, 2009, would be acceptable from a flood risk perspective. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the planning authority on the 26th day of January, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

Reason: In the interest of visual amenity.

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

Reason: In the interest of public health

4. Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health

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

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

6. Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays and 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

Reason: In the interest of residential amenities of surrounding properties and in the interest of clarity.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, management measures for noise, dust and dirt, and construction traffic management proposals.

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

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

Reason: In the interest of sustainable waste management.

9. Any alterations to the public road shall be in accordance with the requirements of the planning authority and where required, all repairs to the public road and services shall be carried out to the satisfaction of the planning authority at the applicant’s expense.

Reason: In the interests of clarity, public safety and amenity.

10. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

11. Prior to the occupation of the development, a Mobility Management Plan shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents/occupants/staff employed in the development and to reduce and regulate the extent of parking. The mobility plan shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport and reflecting the needs of pedestrians and cyclists during Covid-19 pandemic.

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

13. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

14. No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication antennas, shall be erected at roof level other than those shown on the plans and particulars lodged with the application. All equipment such as extraction ventilation systems and refrigerator condenser units shall be insulated and positioned so as not to cause noise, odour or nuisance at sensitive locations.

Reason: In the interests of visual and residential amenities.

15. A plan containing details for the landscaping of all external communal spaces within the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenities

16. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads,

footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

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

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

19. The developer shall pay to the planning authority a financial contribution in respect of the Luas Red Line Docklands Extension (Luas C1), in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Stephen Ward
Senior Planning Inspector
29th September 2021