



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309795-21

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<b>Development</b>	Demolition of 2 storey building and construction of 7 storey building consisting of shared residential development and a cinema/games room and gym.
<b>Location</b>	72-74, Old Kilmainham, Dublin 8
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	4009/20
<b>Applicant(s)</b>	Pertan Construction Services Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Pertan Construction Services Limited
<b>Observer(s)</b>	(1) Cllr Maire Devine (2) Lady Lane Residents Association (3) Brid Smith TD & Cllr Tina McVeigh (4) Peter Keenahan

**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 0.0492 hectares, is located in Kilmainham to the west of the city centre. The appeal site is located on the southern side of Old Kilmainham at its junction with Brookfield Road. The appeal site is occupied by three existing structures. At the junction of the two public roads is a three-storey structure with public house at ground floor level and accommodation above. To the west of this is 2 no. two-storey dwellings. All structures on site are currently vacant and in a semi-derelict condition. The adjoining uses/structures include a yard area associated with Dublin Providers Ltd that adjoins the western and southern boundary with a two-storey warehouse structure located to the south of the site. The northern and western boundary is defined by the public roads. To the north, north east and north west on the opposite side of Old Kilmainham are two-storey structures a mixture between structures with commercial development on the ground floor and two-storey dwellings. To the east of the site and on opposite side Brookfield Road are two-storey dwellings fronting Old Kilmainham. Further to the west are some vacant structures that are wrapped around by the DPL premises (these appear to include a former public house). These appear to be part of the DPL premises.

## 2.0 Proposed Development

- 2.1. Permission is sought for the demolition of an existing two/three-storey building at 72-74 Old Kilmainham and the construction of a 7-storey over basement mixed use development consisting of a 'build-to-rent' shared accommodation residential development consisting of:
- 2.2. (a) 62 no. shared accommodation units, comprising of 5 no. double occupancy units and 57 no. single occupancy units (access from Brookfield Road) and served by residents communal amenity areas comprising of external 202sqm; residents internal amenity areas comprising of 259.7sqm between 1<sup>st</sup> and 6<sup>th</sup> floors); 218.7sqm shared amenity area (at ground level) and 156.8sqm cinema/games room and gym (at basement level).
- (b) 33.2sqm commercial space at ground floor level (access form Old Kilmainham).

The development features 144 no. bicycle spaces (located at ground and basement level); a refuse storage, laundry room and plant room (all located at basement level); landscaping and all associated site development works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission refused based on five reasons...

1. Having regard to the scale, massing and height of the proposed building in relation to existing and emerging context, and to the significant exceedance of indicative plot ratio and site coverage standards, it is considered that the proposed development would appear incongruent in relation to the character of the streetscape, may impact negatively on the wider townscape for which no assessment has been provided, would create an overly abrupt transition in relation to adjoining properties to the east and present a significant constraint to the future development potential of the adjoining Z1 zoned lands. Consequently, the proposed development would constitute overdevelopment of the site and would, by itself and by the precedent it would set for other similar development seriously injure the amenities of the local area, contrary to the City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

2. Having regard to the vacant condition of the existing buildings on the site and the presence of significant roof voids, their conservation potential to provide habitat for protected species and the lack of any ecological surveys submitted as part of the application, it has not been demonstrated that the proposed development would not have an unacceptable impact on protected species. The development would therefore be contrary to the City Development Plan 2016-22 and to the proper planning and sustainable development of the area.

3. Having regard to its scale, mass and form of the proposed building and to the results set out in the submitted Daylight and Sunlight Assessment, it is considered that the proposed development would seriously injure the residential amenities of

adjoining properties, particularly No.s 22A, 22B & 75 Old Kilmainham, by reason of overbearing impact, overlooking, reduced daylight/sunlight and overshadowing. As a result, the proposed development would be contrary to the City Development Plan 2016-22 and to the proper planning and sustainable development of the area and would set an undesirable precedent for similar developments in the area.

4. The proposed development is located on a heavily trafficked road which is a Quality Bus Corridor and planned Bus Connects route and in an area where there is limited on street loading bay and car parking available. Having regard to the intensification of use on the site, the proposed pedestrian access and cycle storage arrangements and inadequate footpath width on Brookfield Road, the proposal would create potential conflict between road users. The service access proposals are unclear and no. drop-off provision within the site is proposed. As a result the development would generate overspill parking and serving activity onto the adjacent roads, causing obstruction to pedestrians, bus operations and road user, and as such would therefore be contrary to the City Development Plan 2016-22 and to the proper planning and sustainable development of the area.

5. The existing buildings on the site are 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 has not been satisfactorily demonstrated that the proposed demolition of the existing buildings and potential removal of archaeological features 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 is encourage, and Policy CHC1 which provides for 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.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

Planning report (24/02/21): the proposal was considered unacceptable in regards to visual impact/design, impact on adjoining amenities, ecological impact, traffic impact and insufficient justification for demolition of the existing building on the grounds of architectural heritage and archaeological grounds. Refusal was recommended based on the reasons outlined above.

### 3.2.2. Other Technical Reports

Drainage Division (25/01/21): No objection.

City Archaeologist (16/02/21): Further information required including preparation and submission of a full archaeological assessment, an historic buildings survey and alteration of the height and scale of the proposal.

Transportation Planning (19/02/21): Further information required revised pedestrian access, review building setback along Brookfield Road to provide a minimum setback of 1.8m and review of the proposal having regard to impact along Old Kilmaninham and potential obstruction of traffic overspill of parking.

## 3.3. Prescribed Bodies

An Taisce (03/02/21): The proposal potential impacts on an adjacent protected structure, Kilmainham Mill, the retention and repair of the existing structure on site should be explored, the scale and design of the development is inappropriate and detrimental to character and amenities of the area.

## 3.4. Third Party Observations

3.4.1 A number submission were received, the issues raised can be summarised as follows...

- Inappropriate type of residential accommodation, inappropriate design, excessive scale, traffic impact/overspill of parking, adverse impact on

adjoining amenity through scale and construction impact, ecological impact, architectural heritage issues. .

#### 4.0 Planning History

2737/15: Permission refused for change of use of existing vacant public house and partial demolition to provide for 4 no. dwellings. Refused based on two reason including material contravention of the zoning objective and issues concerning the quality and design of residential accommodation.

2158/08: Permission refused for modifications to ref no. 4259/07 including change of office accommodation to medical centres. Refused based on one reason relating to material contravention of the zoning objective.

4259/07/x1: Permission granted for extension of the duration of permission.

4259/07: Permission granted for demolition of existing buildings on site and construction of a five-storey over basement structure including a ground floor retail unit, office use at first floor and 10 no. apartment units above and associated site works.

1848/06: Permission refused for demolition of existing structures on site and construction of a five-storey over basement structure including a ground floor restaurant and 16 no apartments above. Refused based on three reasons including material contravention of a zoning objective, inappropriate design and scale and failure to meet the Development Plan standards for private open space.

## 5.0 Policy Context

### 5.1. National Policy

#### National Policy

#### 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.

#### 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. Development Plan

The relevant Development Plan is the Dublin City development Plan 2016-2022. The appeal site is zoned Z1-Sustainable residential Neighbourhoods with a stated objective 'to protect, provide and improve residential amenities'.

- 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 –

CHC1: To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

- 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.16.10.17 Retention and Re-Use of Older Buildings of Significance which are not Protected

### 5.3. Natural Heritage Designations

5.3.1 None within the zone of influence of the site.

## 5.4. EIA Screening

5.4.1 The proposed development is of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)) 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 on lands zoned for urban development, 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 residential and commercial. I conclude that there is no real likelihood of significant effects on the environment based on the nature, size and location of the proposed development. No EIAR is required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Hughes Planning & Development Consultants on behalf Pertan Construction Services Limited. The grounds of appeal are as follows...

- The height and scale is appropriate and acceptable under development policy for city centre areas, consistent with the Urban Development and Building height Guidelines and has an acceptable visual impact at this location.
- There is no evidence to suggest that there are any protected species in the existing building. Time constraints have meant there was insufficient time to compile a report and it is not the right time of the year to carry out such.
- In terms of impact on adjoining properties the appellant notes the results of the Daylight/Sunlight report in relation to VSC and APSH for adjoining properties. It is noted that if the Board has concerns regarding impact on adjoining properties the proposal can be amended with the revised design submitted with the appeal noted (revised Daylight/Sunlight report).
- There is no provision of parking due to its proximity to public transport and a previous development was permitted on the site in this regard (4259/07). The

revised design provides for a wider footpath along Brookfield Road (set back of ground floor) and provision of a set down space along Brookfield

- A revised design has been submitted for consideration if deemed necessary with the alterations including a reduction in height by one floor, set back of ground floor along Brookfeild Road and reduction of number and size of windows on the south facing elevation.
- The building on site is not a protected structure and has been badly damaged by a fire. This was not an issue concerning a previous planning approval on site and insufficient time was viable to prepare a full Heritage Impact Assessment in preparing the appeal.
- The proposal would not set an undesirable planning precedent with precedent for similar co-living developments permitted in various areas of the city. The appeal includes details of a number of similar proposals permitted in recent times.

## 6.2. Planning Authority Response

6.2.1 No response.

## 6.3. Observations

6.3.1 A number of observations have been received from the following...

Cllr Maire Devine

Lady Lane Residents Association

Brid Smith TD & Cllr Tina McVeigh

Peter Keenahan, 3 High Road, Kilmainham Lane, Dublin 8.

The issues raised in the observations are similar in nature and can be summarised as follows...

- Excessive scale and height, out of character at this location.
- Adverse impact on adjoining amenities due to overlooking and overshadowing.
- Co-living developments no longer permitted under national policy. Co-living provides for an inappropriate form of residential development and is of poor quality model for future housing.
- Contrary development plan policy in terms of height and plot ratio.
- Architectural heritage impact and inappropriate design without adequate regard to historic market site at this location.
- Lack of car parking and existing capacity issues.
- Flood risk.

## 7.0 **Assessment**

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

Principle of Shared Accommodation

Quality of residential accommodation

Visual Amenity/Architectural Character/Height

Neighbouring residential amenity

Traffic/Car Parking

Architectural Heritage

Ecological Impact

Flood Risk

7.2. Principle of Shared Accommodation

7.2.1 The guidelines for Sustainable Urban Housing: Design Standards for New Apartments were revised on 23<sup>rd</sup> December 2020 in relation to shared accommodation provision, specifically SPPR 9, which states:

There shall be a presumption against granting planning permission for shared accommodation/co-living development unless the proposed development is either:-

(i) required to meet specific demand identified by a local planning authority further to a Housing Need and Demand Assessment (HNDA) process;

or,

(ii) on the date of publication of these updated Guidelines, a valid planning application to a planning authority, appeal to An Bord Pleanála, or strategic housing development (SHD) planning application to An Bord Pleanála, in which case the application or appeal may be determined on its merits.

7.2.2 The current application was submitted prior to the publication of the revised guidelines, therefore, as per SPPR 9(ii), I am assessing this application on its merits. I note a submission makes reference to a Circular from the Department issued prior to the Guidelines and prior to the lodgement of this application, however, the guidelines and not the circular take legal precedence in this instance.

7.2.3 In assessing the merits of this application, I consider it reasonable to consider the guidance provided in the 2018 Apartment Guidelines (notwithstanding they have been superseded) as an aid to assessing the merits of this application, as they are the most relevant guidance available against which to assess a shared accommodation proposal. I have therefore referred to specific sections of the 2018 Apartment Guidelines in my assessment hereunder.

Location:

7.2.4 A number of the submissions consider the proposed development is not justified at this location. It is contended that the proposal would contribute to an overconcentration of 'transient' housing in the area and does not meeting planning requirements for a sustainable community. Section 5.18 of the 2018 Apartment Guidelines notes that due to the distinct nature and features of Shared Accommodation type development, it is only appropriate where responding to an identified urban housing need at particular locations. There is an obligation on the

proposer of a shared accommodation scheme to demonstrate to the planning authority that their proposal is based on accommodation need and to provide a satisfactory evidential base accordingly. Section 5.19 states that the prevailing context of the proposed site shall also be considered, with city centres identified as the appropriate location for such development. Section 5.22 states that shared accommodation proposals may be related to the accommodation needs of significant concentrations of employment in city centres and core urban locations such as major national level health campuses or similar facilities. The guidelines state that planning authorities should ensure that the scale of such proposals is appropriate to the location and / or buildings involved and to the specific role that the development of the shared accommodation sector should play in the wider urban apartment market.

7.2.5 The submitted reports in relation to the shared accommodation/co-living element of the development include a Shared Accommodation Operational Management Plan and Travel Plan. These reports set out a rationale/justification for this type of development having regard to the site location and housing need, as well as management proposals. The document also has regard to the location of the site in proximity to high frequency public transport, within walking distance to the city centre and within the centre of a large mixed use area. The appeal submission points to the fact that, at present, there is only a limited number of shared accommodation schemes granted, currently within the planning system, or potentially part of a future application. The documents submitted also state that there is a demand for this type of development. The information submitted points out that demand in the rental markets has been particularly strong in the past few years. The central location of the site is considered, as well as proximity to employment, and the high level of existing services and amenities. The type of accommodation proposed is considered an innovative solution aimed at revitalising underutilised spaces such as this site. It is considered that the co-living model of residential development can provide a reasonable new form of accommodation to help in satisfying the demand in the housing market and alleviate rental affordability pressures.

7.2.6 While submissions consider this area is inappropriate location for Shared Accommodation, I note that site is a city centre location in close proximity to a wide range of uses and high volume employment uses such as the hospital campus and is accessible to the public transport network. I am satisfied that the location is suitable for a Shared Accommodation development of the type proposed. I consider that the link between the application site and employee catchment as required under the Apartment Guidelines has been demonstrated and the location of the development in the context of accessibility within walking and cycling distance of the city centre, and proximity to high frequency public transport offerings of bus and Luas is acceptable.

Identified Need:

7.2.7 As noted previously, the 2018 Apartment Guidelines state that shared accommodation is only appropriate where responding to an identified urban housing need at a particular location. A large number of submissions have raised concerns in relation to the transient type of accommodation does not support sustainable communities and will not contribute to the existing community. The 2018 Apartment Guidelines state that the planning authority should monitor the provision of Shared Accommodation in areas to ensure a proliferation does not result. Having reviewed all the information submitted and having regard to the historical context of houses in the immediate area and traditional apartment developments, I do not consider there is an oversupply of this type of accommodation. I consider this shared accommodation format will provide for diversity in unit type and tenure in this area. Concerns raised in submissions in relation to the negative impact of Shared Accommodation on established communities is not substantiated and there is no evidence to support these claims. In my view, this type of accommodation should not be viewed as being provided to the detriment of family housing provision or social housing. This type of accommodation is recognised as fulfilling a distinct housing need under planning policy. While working from home is dominant at present due to the Covid 19 pandemic, I do not agree with concerns raised in submissions that this format of accommodation is incapable of supporting working from home, notwithstanding that this current situation may be a relatively short term issue.



7.2.8 I am satisfied that there is justification for this type of housing in the area, which is in close proximity to employment opportunities as described under the Apartment Guidelines and accessible by high quality public transport and active modes. It is evident that there is a shortage of rental accommodation and housing in general, which has not been reduced during the Covid 19 pandemic. The provision of this format of accommodation, will provide additional accommodation and will free up other rental accommodation for the wider housing market. At a local level, the proposed development would introduce a significant residential population into this area and support the zoning objective to avail of opportunities to provide for residential use with appropriate amenity facilities as well as providing for a vibrant retail and commercial core with animated streetscapes. Having considered all the information before me, I consider that the proposed shared accommodation use overall is acceptable at this location and is in line with the overarching national aims to increase housing stock, including in the rental sector, as set out in various policy documents, including, but not limited to, Rebuilding Ireland – Action Plan for Housing and Homelessness (2016).

### 7.3 Quality of residential accommodation:

7.3.1 As noted previously in this report, notwithstanding that the Apartment Guidelines were updated in 2020, I have had regard to the 2018 Apartment Guidelines as an aid to assessing the merits of this application. The 2018 Apartment Guidelines refer to Shared Accommodation as a specific type of Build to Rent (BTR) accommodation where individual rooms are rented within an overall development that includes access to shared or communal facilities or amenities. Specific Planning Policy Requirement (SPPR) 7 and 9 of the 2018 Apartment Guidelines relate to Shared Accommodation. A clustered model of shared accommodation with one format detailed as 2-6 bedrooms sharing common areas is advocated in the guidelines. Section 5.15 notes other formats may be proposed. Section 5.16 identifies specific standards for bedroom sizes and the provision of communal amenities. SPPR 9 of the 2018 Apartment Guidelines states the following: “Shared Accommodation may be provided and shall be subject to the requirements of SPPRs 7 (as per BTR). In addition: (i) No restrictions on dwelling mix shall apply; (ii) The overall unit, floor area

and bedroom floorspace requirements of Appendix 1 of these Guidelines shall not apply and are replaced by Tables 5a and 5b; (iii) Flexibility shall be applied in relation to the provision of all storage and amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities. The obligation will be on the project proposer to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity; (iv) A default policy of minimal car parking provision shall apply on the basis of shared accommodation development being more suitable for central locations and/or proximity to public transport services. The requirement for shared accommodation to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures”.

7.3.2 Table 5a of the Apartment Guidelines set out the minimum bedroom size for shared accommodation proposals. For a single room the minimum bedroom size is 12 sqm. For a double/twin room, the minimum bedroom size is 18 sqm. The proposed development is for 62 units consisting of 5 no. double occupancy units and 57no. single occupancy units. The smallest single occupancy unit is 12.2sqm and the smallest double occupancy unit is 20.3sqm. The units provide for an entrance area with an ensuite bathroom, a kitchenette/storage area featuring a sink, electric hob and fridge and a sleeping area that also doubles up as a living space. All units are single aspect. All the bedrooms meet the minimum bedroom size of 12sqm for single occupancy rooms and 18sqm for double occupancy rooms.

7.3.3 Communal space in the development includes a ground floor amenity space with a lounge area, games area, dining area, shared kitchen (218.7sqm), at first floor level a shared kitchen area (29.2sqm) an external open space (65.5sqm), at second floor level a shared kitchen area (45.3sqm) an external open space (8.4sqm), at third floor level a shared kitchen area (45.3sqm) an external open space (8.4sqm), at fourth floor level a shared kitchen area (45.3sqm) an external open space (8.4sqm), at fifth floor level a shared kitchen area (47.3sqm) and three external open space (8.4sqm, 44.3sqm and 50.4sqm respectively) and at sixth floor level a shared kitchen area (47.3sqm) an external open space (8.4sqm).

The approved development provides a total of 212.4 sqm of shared kitchen/dining/living space is provided with every floor having a shared k/d/l facility. The level of such space equates to 3.17sqm per bedspace. This figure does not include additional common living space of 218.7 sqm including a lounge area, games area, dining area, shared kitchen (218.7sqm). This takes the average of communal space in the approved development to 6.43 per bedspace. In terms of cooking facilities the approved development provides a rate of one cooking station per 3.35 persons (includes communal kitchen facilities and not individual room cooking facilities).

#### 7.3.4 Daylight and Sunlight

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 Report has been submitted with the application, which I have considered. Within the submitted Daylight and Sunlight Report, I note internal spaces and external amenity areas 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 ground and first floor have been analysed in the submitted reports (assessment or original proposal and assessment of the amended/approve proposal) to determine the Average Daylight Factor for each unit. The lower floors will experience the highest degree of obstruction from existing structures and will therefore demonstrate the lowest daylight levels. Higher floor levels are not assessed as it is assumed that having the same design layout they will achieve better results. I accept the basis of the survey. 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 space, an ADF of 1.5% is applied to the site. The ADF of the submitted floors shows that all shared k/d/l rooms are in excess of 2%, with the exception of one unit having an ADF of 1.7% (first floor single room). The units have a shared living and kitchen function with the BRE guidelines having no value specified for shared living/kitchen accommodation. 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%). All of ground floor communal spaces have an ADF above 2%. In terms of the first floor all of the living/bedroom spaces in the individual units have an ADF of well above 1.5%. The shared kitchen at first floor level has an ADF in excess of 2%. I consider the findings of the report in relation to ADF values acceptable and I am satisfied that the proposed development will meet residential amenity levels for future occupants.

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 assessment includes three amenity areas within the development, which include a communal open space at fifth floor level (65.5sqm) and two spaces at fifth floor level (44.3sqm and 50.4sqm). All three spaces assessed will be capable of receiving more than 2.0 hours of sunlight on 21st March on over 50% (lowest figure is 79.8%) I am satisfied that the outdoor amenity space meets the targets and taken as a whole the development is well served and will adequately serve future occupants.

7.3.6 I am that satisfied that overall quality of residential development proposed is satisfactory based on the relevant guidelines, that the design, layout and level of communal amenity is satisfactory as is the level of daylight and sunlight available to all units, communal space and amenity space. The proposed development as

approved would give rise to a satisfactory level of residential amenity for future occupants.

7.3.7 The applicant/appellant has submitted an amended design that reduces the no. of units from 62 to 53 units (8 double and 45 single occupancy rooms) and reduce the development by one from seven to six storeys. I would consider that the amended proposal maintains similar standards to the proposal applied for in terms of meeting the required standards in terms of room size, communal space including outdoor amenity space and daylight provision within the scheme.

7.4 Visual Amenity/Architectural Character/Height:

7.4.1 The proposal was refused on the basis of being excessive in scale and height and having an adverse visual impact at this location. The proposal provides for a development with plot ratio of 4.77 and site coverage of 94.72%. The permissible plot ratio within the Z1 zoning is 0.5-2.0 (Section 16.5) under the City Development plan. In relation to site coverage indicative site coverage for the Z1 zoning is 45-60% (section 16.6) under the City Development Plan. In the case of both plot ratio and site coverage a higher plot ratio and site coverage in exceedance of the stated levels may be permitted in certain circumstances including...

- Adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed.
- To facilitate comprehensive re-development in areas in need of urban renewal.
- To maintain existing streetscape profiles.
- Where a site already has the benefit of a higher plot ratio.
- To facilitate the strategic role of institutions such as hospitals.

I would be of the view that a higher plot ratio and site coverage than the stated level under the Development Plan is acceptable subject to the proposal being satisfactory in the context of both the visual amenities of the area and the amenities of adjoining properties. In addition I would note that existing site coverage is higher than the upper limit for the zoning objective and the site is at a location that could facilitate higher than specified levels due to its accessibility to public transport.

7.4.2 The proposal consists of a seven-storey structure with part of the structure being five-storeys. The development has a ridge height of 26.2m at its highest point (relative to level of Old Kilmainham). 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. The appeal site is located on a corner site at the junction of Old Kilmainham and Brookfield Road, which does normally lends itself to structures of a land mark nature and increased scale over existing structures. The documents submitted include photomontages from a number of viewpoints, which I am satisfied accurately reflect the visual impact of the proposed development. The appeal site is located at a point in the streetscape (southern side of Old Kilmainham) where the pattern of development/streetscape is fragmented and weak with the existing DPL premises wrapping around the site and no strong urban edge located to the immediate west of the site. I would be of the view that the proposed development has a significant visual impact at this location primarily due to its overall height, bulk and design in the wider area and in part due to the weak urban edge to the west of the site in terms of the immediate vicinity. The predominant scale of structures in the vicinity is two-storey and the proposal would be highly visible in the surrounding area including from higher ground to the south of the site along Brookfield Road. I would consider that the photomontages illustrate that the overall bulk and scale of the structure would have an adverse and prominent visual impact at this location and that existing streetscape struggles to absorb this impact sufficiently. I do consider that the adjoining pattern of development contributes to the visual impact and that there is a possibility that future redevelopment of the site to the south and west may help absorb the visual impact of the proposal, however I can only assess it on its merits and the current situation. Notwithstanding such I would consider that the proposal would have an unacceptable prominent visual impact when viewed along Old Kilmainham both from the east and west, from the south along Brookfield Road and north along Shannon Terrace. The proposal would be injurious to the visual

amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

7.4.3 In response to the appeal the applicant/appellant submitted a revised proposal for consideration (photomontages also included). The main change is the reduction in height of the structure from a seven-storey to a six-storey structure with ridge height of 23.7m instead of the 26.2m originally proposed. The configuration of the development is altered with a reduction to corner element to four-storeys with the six-storey element wrapping around it. I would consider a reduced scale is a welcome approach, however I would still have reservations about the overall design and scale in the context of its visual impact in the surrounding area. I would still be of the view that the structure proposed is of significant bulk and scale relative to existing development in the area and would fail to successfully integrate into the streetscape at this location and have a detrimental impact on the visual amenities of the area. Permission was previously granted under ref no. 4259/07 for a five-storey development on the appeal site and I would consider that a further amendment to the revised design to reduce it to five-storeys would provide for a development of acceptable scale and overall visual impact. I would recommend a condition omitting the fifth floor from the revised design proposal received by the Board on the 23<sup>rd</sup> of March 2021. I would consider that this amendment would provide for a structure of appropriate scale and design and reduce the abrupt nature of the transition between the existing two-storey development on adjoining sites while still providing a development that maximises the development potential and provides for efficient use of the site. I would be satisfied that this scale of development would integrate better with the existing streetscape and be less prominent in the surrounding area. This amendment would reduce the proposal by 9 no. units (6 no. single and 3 no. double units) giving a total of 44 units.

7.4.4 One of the observation raises concerns about the overall visual impact of the proposal but also raises specific concern regarding the blank nature of the western gable in the context of the adjoining site which is noted as historically being a market space. The observation notes that the design of such should have regard to such in

terms of its overall treatment. The open nature of the adjoining site (DPL) does mean there is likelihood the western elevation of any proposal on this site will be a blank elevation to have regard to future development potential of the adjoining site. I would consider that although such is not the most aesthetically pleasing approach, the development of the adjoining site is a factor. I would be of the view that provision of blank elevation is appropriate to allow for future redevelopment and provision of development providing an improved urban edge along the public road. As noted above I am recommending some amendments to the scale of the structure proposed.

## 7.5 Neighbouring residential amenity

7.5.1 The proposal was refused on the basis of being injurious to the residential amenities of adjoining properties, particularly No.s 22A, 22B & 75 Old Kilmainham, by reason of overbearing impact, overlooking, reduced daylight/sunlight and overshadowing.

Refusal reason no. 1 also indicated potential adverse impact on the development potential of the adjoining lands also. In terms of adjoining properties the lands immediately adjoining the site are in commercial use and consist of a yard area associated with DPL. The nearest residential uses are to the west fronting onto Old Kilmainham (opposite side of Brookfield Road), with no. 75 and 77 being two-storey residential units. On the opposite side of Old Kilmainham Road to the north are no. 22a, 22b and no. 23. 22a and 22b have retail units at ground floor level with residential use above (it is possible that the ground floor of no. 22a is in residential use currently, however I cannot confirm such). No. 23 is a vacant structure. Auburn Terrace is a terrace of two-storey dwellings located on the north side of Old Kilmainham and to the north east of the site.

7.5.2 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).

7.5.3 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).

7.5.4 A Daylight and Sunlight Report has been submitted with the application (December 2020). The report focuses on properties in the vicinity with focus on the following properties...

22A and 22B Old Kilmainham (VSC & APSH)

75 Old Kilmainham (VSC & APSH)

## Auburn Terrace (VSC & 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) –

7.5.5 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° 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.

7.5.6 In relation to Old Kilmainham the properties assessed for VSC are windows on the front elevation of no. 22a and 22b, 3 windows at no. 75a including one on the side and two on the rear of the property and the window son the front elevation of Auburn Terrace. In the case of the windows on no. 22a and 22b the existing windows

assessed fall below the 27% and more than 0.8 times their former value with impact described as moderate. In the case of no. 75, the window on the site elevation falls below the 27% standard and more than 0.8 times its former value with impact described as significant whereas the other two windows at no. 75 remain above the 27% standard. In the case of Auburn Terrace of the 15 windows assessed (5 no. dwellings) all but 5 windows (one on each dwelling) remain above the 27% value and in the case of the three windows that fall below it the value is less than 0.8 times their former value with impact described as imperceptible in all cases.

7.5.7 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 22a, 22b and 75 Old Kilmainham to the north and east of the site and the five dwellings in Auburn Terrace to the north east of the site. In the case of Auburn Terrace 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). In the case of no.s 22a and 22b the windows assessed fall below the 25% annual value and remain above the 5% winter value with impact described as being not significant-slight. In the case of no. 75 the side window is not assessed as it is not within 90 degrees of due south. In the case of the two windows on no. 75 assessed one remains above the 25% annual value and one falls below such by a marginal amount whereas both remain above the 5% winter value with impact described as being imperceptible to not-significant.

7.5.8 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>. I would note the assessment of proposed amenity space within the scheme is outlined in Section 7.3 above regarding quality of the development. In terms of adjoining amenity spaces the properties in the immediate vicinity appear to be lacking in outdoor amenity

space with no. 22a and 22b being first floor apartments. No. 75 has a small rear amenity space.

7.5.9 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 increased height over the existing development in the immediate vicinity due to its city centre location, its proximity to public transport, 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.

7.5.10 One of the reasons for refusal indicates that the proposal would set out in the development would seriously injure the residential amenities of adjoining properties, particularly No.s 22A, 22B & 75 Old Kilmainham in part due to impact on daylight and sunlight. The applicant/appellant has a submitted a revised scale, which includes a reduced development with a reduction in height due to a decrease by one storey from seven to six-storeys. The applicant/appellant submitted revised Daylight and Sunlight Assessment, which detail the results of the same tests for the revised

proposal. The results for VSC for no. 22a and 22b improve due to the decreased scale of the revised proposal but still provide for values below the 27% and more than 0.8 times their former value with impact described as slight. In relation to APSH the revised scheme yields improved results however they still fall below the 25% annual value and remain above the 5% winter value with impact described as being not significant. The revised assessment also includes an assessment of impact of sunlight on the amenity space associated with no. 75 and the existing site to the south of the site (DPL site). In relation to no. 75 it is noted that this property has a baseline value of 0% for its amenity space and that no assessment is applicable due to such. The amenity space associated with no 75 appears to be constrained with the site to the south quite overgrown with mature vegetation and a high boundary wall along the side of property. In relation to the lands to the south, such would meet the target level of 2 hours of sunlight on March 21<sup>st</sup> over more than 50% of the area of the site assessed.

7.5.11 The assessment of residential properties in vicinity has been in relation no. 22a, 22b and 75 Old Kilmainham, and Auburn terrace. I am satisfied that these are the appropriate residential units requiring assessment in terms of impact and that the scope and detail in the Daylight and Sunlight assessment reports is sufficiently robust to reach a conclusion. In case of the dwellings there are variable result in terms of overall impact on daylight and sunlight. The level of impact on Auburn Terrace to the north east and no. 75 Old Kilmainham to the east is of a level that would not be detrimental to the residential amenities of these properties with a good degree of compliance with the standards recommended by the BRE guidelines. The most significant impact is in relation to the properties immediately to the north on the opposite side of Old Kilmainham Road in the form of no. 22a and 22b. I would note that as part of the appeal the applicant/appellant has submitted a revised proposal for a reduced scale development and such does have a reduced impact on daylight and sunlight in relation properties in the vicinity. I would refer to the above section regarding visual impact and my concerns that the original and revised proposal are inappropriate in design and scale in the context of visual amenity. As stated above I recommend that the revised scheme be implemented with an amendment omitting the fifth floor level and reducing the overall height of the development five-storeys.

7.5.12 This amendment will further reduce the impact on adjoining properties in particular nos 22a and 22b to the north of the site. I would consider that this level of development is an appropriate scale and level of development at this location and the provision of a development along the road frontage of the site is an appropriate and logical pattern of development. As noted above permission has been previously granted for a five-storey structure on the site. I would consider that subject implementation of the revised scheme and the further amendment in omitting the fifth floor, the proposal would provide for an acceptable level of development at this location and have adequate regard to the amenities adjoining properties in terms of daylight and sunlight. I would also note that the standards in relation to daylight and sunlight are a general guide only and the BRE guidance states that they need to be applied flexibly and sensibly. The document states that all figures/targets are intended to aid designers in achieving maximum sunlight/daylight for future residents and to mitigate the worst of the potential impacts for existing residents. It is noted that there is likely to be instances where judgement and balance of considerations apply. To this end, I have used the Guidance documents referred to in the Ministerial Guidelines to assist me in identifying where potential issues/impacts may arise and to consider whether such potential impacts are reasonable, having regard to the need to provide new residential development within Dublin city, and increase densities within zoned, serviced and accessible sites, as well as ensuring that the potential impact on existing residents is not significantly adverse and is mitigated in so far as is reasonable and practical. In this regard I would be of the view that subject to the suggested amendments that the level of impact on adjoining properties is reasonable in the context of the urban location of the site and the reasonable expectation of development of the site to a scale appropriate having regard to its location relative to the city centre, public transport infrastructure and the existing employment activity as well as in the context of national, regional and local planning policy objectives.

7.5.13 The issue of overlooking, overbearing impact and privacy is raised in the appeal submissions. The appeal site is an inner city location and the site itself is at a prominent junction and along a main thoroughfare through this urban area. 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 the level of development proposed (subject to amendment) and that in such locations that a level of overlooking and reduced privacy is an unavoidable consequence of urban development. The majority of glazing is located on the northern and eastern elevation, which are defined by existing public roads and as such overlook primarily public areas. The amended scheme does have some private terrace areas and such are located along the road frontage of the site. There are balcony areas on the southern elevation serving communal space and such overlook a commercial yard. I am satisfied that the proposal would be acceptable in the context of adjoining amenities.

7.5.14 There is indication in refusal reason no. 1 that the proposal would impact on development potential of adjoining lands. The appeal site is located at the corner of Old Kilmainham and Brookfield Road. To the south and west of the site is larger premises owned and operated by Dublin Providers Limited (DPL). Where their property adjoins the appeal site is in an open yard used for storage. There is a large warehouse building located to the south of the site. To the west is a cluster of vacant structures that the DPL property wraps along on three sides. There is potential for future redevelopment of the DPL site given its sizeable dimensions and the nature of existing use. The layout of the proposal on site follows the logical layout for development for any new development on site and the proposal provides for blank gables where it adjoins the western and southern boundaries of the site. There is a degree of separation between the part of the southern elevation featuring windows and balcony areas. I would be of the view that the proposal as sought would not impact the development potential of the adjoining site, which is sizeable however I would consider that it may be desirable for some level of co-ordination in terms of the redevelopment at this location.

## 7.6 Traffic/Car Parking

7.6.1 Permission was refused on the basis of traffic impact and specifically failure to provide off-street car parking or facilitate 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 800m (walking distance) of Suir Road Luas stop and 900m (walking distance) of Fatima Luas Stop and 1.1km (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”.

7.6.2 The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, December 2020 note in relation to central/accessible locations 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”.



7.6.3 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 (particularly Jame's Hospital) in the surrounding area. The appeal site is also within 800m/11min walking distance of Suir Road Luas stop on the red line. The appeal site is located on QBC corridor and a bus corridor subject to future Bus Connects proposals. 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.

7.6.4 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.

7.6.5 The refusal reason raises concerns 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. In terms of commercial development, the proposal entails the provision of 33.2sqm. The proposal also includes communal facilities at ground floor level associated with the shared accommodation. The previous use of the building on site appears to have been two dwellings and a sizeable public house. I would question whether the commercial element that requires service/delivery vehicles is more intense than the previous use with the commercial component greatly reduced. The appellant has submitted a set

of revised plans that have provided for greater setback along Brookfield Road to allow for a wider footpath and a set down area. I would consider that these changes are a welcome addition. I would consider that the proposed development is satisfactory in the context of traffic safety and that the lack of provision of parking is appropriate at this location.

## 7.7 Architectural Heritage:

7.7.1 Permission was refused on the basis that the existing buildings on the site are considered to be of potential historical and archaeological significance and it has not been satisfactorily demonstrated that the proposed demolition of the existing buildings and potential removal of archaeological features would not be contrary section 16.10.17 and Policy CHC1 of the Dublin City Development Plan, 2016-2022. The existing structures on site, which consist of three-storey structure with public house at ground floor level and 2 no. two-storey dwellings do appear to be of considerable age, however the structures on site are in poor condition and none are included on the record of protected structures or have any status on the National Inventory of Architectural Heritage (NIAH, this area has been surveyed). The appeal site is also not within the Architectural Conservation Area, which is located further to the north. The applicant has correctly identified that permission was previously granted on site to demolish the existing structures under ref no. 4259/07.

7.7.2 I am of the view that subject to the provision of an appropriate design and nature of use that the demolition of the existing structures on site would be justified. The structures although of considerable age are not so distinctive or uncommon in type and such is reflected by the fact they do not have any protected architectural heritage status either on the record of protected structures or the NIAH. The submission from An Taisce suggest the proposal would impact the setting of a protected structure (Kilmainham Mill) located to the north west. I am satisfied that the site is sufficient removed from the protected structure and that the scale of the development subject to amendments suggested would have no adverse impact on the setting of such.

## 7.8. Ecological Impact:

7.8.1. Permission was refused on the basis that the building has potential to be a habitat for protected species and the lack of any ecological surveys submitted as part of the application. This appear to relate to the fact the existing structures are vacant and in poor condition with the possibly of wildlife using them as a habitat. The appeal site is occupied by existing structures and is not clear when they were last in active use with the indication on file that damage has been caused to the structures by fire. The existing site is in built up urban location and is not a known habitat for protected species or subject to any natural heritage designations. Notwithstanding such there is a possibility that the existing structures may provide habitat for wildlife due to their vacant state, possibly bat species. There are no ecological surveys. I would consider that this is issue that does not merit refusal and could have been dealt way by way of condition. I would recommend that in the event of a grant of permission an appropriate condition be attached to deal with this matter.

## 7.9 Flood Risk:

7.9.1 A number of the observations raise concerns regarding flood risk due to the proximity of the site to the Camac River. The applicant submitted a Flood Risk Assessment. The flood risk assessment identifies flooding history in the area and existing flood map information for the area (CFRAM). The main source of flooding in the area is fluvial with a number of flood incidences concerning the River Camac. Based on the CFRAM mapping the appeal site is within Flood Zone C but there is partial encroachment of Flood Zone B into the site. The assessment notes that no residential area is within impacted with the ground floor consisting of commercial development co-working areas and the basement are confined to storage (it is noted that the access to the basement level is within Flood Zone C), which are not vulnerable developments in terms of the assessment of flood risk. It is noted that the finished floor level of the development which is unchanged to tie in with existing level of the footpath along Old Kilmainham, is sufficient to protect against a 0.1% AEP. As there are no residential units located on the ground floor no mitigation measures are proposed.

7.9.2 The proposal is for redevelopment of an existing inner city site. The site is currently occupied by a significant level of development and high degree of site coverage. The nature of the proposed development is residential and the site is predominantly in Flood Zone C with the northern edge of the site impacted by Flood Zone B. I am satisfied that based on the nature of uses at ground and basement level, which include commercial, communal space and storage that flood risk is not a factor or a reason for precluding the development. I am also satisfied that the proposal would not exacerbate flood risk with the appeal site already occupied by structures that provide a high degree of site coverage.

## 8.0 **Appropriate Assessment**

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 **Recommendation**

9.1. I recommend a grant of permission subject to the following conditions.

## 10.0 **Reasons and Considerations**

Having regard to the following:

(a) the policies and objectives set out in the Dublin City Development Plan 2016-2022.

(b) the Rebuilding Ireland Action Plan for Housing and Homelessness, 2016.

(c) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018.

(d) the Design Manual for Urban Roads and Streets (DMURS), 2013.

(e) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009.

(f) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018 and Sustainable Urban Housing, Design Standards for New Apartments, (Updated) Guidelines for Planning Authorities (2020).

(g) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009.

(h) Architectural Heritage Protection – Guidelines for Planning Authorities, 2011.

(i) the nature, scale and design of the proposed development.

(j) the availability in the area of a wide range of social, community and transport infrastructure.

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

(l) the planning history within the area.

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this city centre location, would not seriously injure the residential or visual of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by the further plans received by the Board on the 23<sup>rd</sup> day of March 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. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

(a) the fifth floor level of the scheme as per the plans submitted to the Board on the 23<sup>rd</sup> March 2021 shall be omitted.

Revised plans and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual amenities of the area.

3. The shared accommodation units hereby permitted shall operate in accordance with the definition of Build to Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in March 2018.

Reason: In the interests of the proper planning and sustainable development of the area.

4. Prior to the commencement of development, the developer shall submit details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of 15 years shall be from the date of occupation of the first 'shared living units' within the scheme.

Reason: In the interests of proper planning and sustainable development of the area.

5. Prior to expiration of the 15 year period referred to in the covenant, the developer shall submit ownership details and management structures proposed for the continued operation of the entire development as a shared accommodation scheme.

Any proposed amendment or deviation from the shared accommodation model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

6. Prior to commencement of development on site, the developer shall submit, for the written agreement of the planning authority, details of the management company, established to manage the operation of the development together with a detailed and comprehensive Shared Accommodation Management Plan which demonstrates clearly how the proposed shared accommodation scheme will operate.

Reason: In the interests of orderly development and the proper planning and sustainable development of the area, and in the interests of residential amenity.

7. Details of the materials, colours and textures of all the external finishes to the proposed buildings and detailed public realm finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

8. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause a nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

9. No additional development shall take place above roof parapet level of the shared accommodation buildings, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area, and to allow the planning authority to assess the impact of any such development through the planning process.

10. 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.

Reason: In the interests of visual and residential amenity.

11. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and surface water management.

12. 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 not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

13. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and



employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

14. Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development. Any envisaged destruction of structures that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.

**Reason:** In the interest of wildlife protection.

15. 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.

16. 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 a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, hours of working, noise management measures and off-site disposal of construction and demolition waste.

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

17. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

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

Reason: In the interest of public health.

19. 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.

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Colin McBride  
Planning Inspector

29<sup>th</sup> September 2021