



An  
Bord  
Pleanála

## Inspector's Report ABP 310074-21.

### Development

Demolition of rear return and renovation and conversion of existing dwelling at No 726 South Circular Road to two apartments and construction of Twenty-one, dwellings in two blocks, surface car and cycle parking, new vehicular and pedestrian cycle accesses ancillary, infrastructural and site works.

### Location

No 726 South Circular Road, Dublin 8.

### Planning Authority

Dublin City Council

### P A. Reg. Ref.

2174/21

### Applicant

Legendside Ltd..

### Type of Application

Permission.

### Decision

Refuse Permission

### Type of Appeal

First Party X Refusal

### Appellant

Legendside Ltd.

*Cont'd overleaf*

**Observers (7 Parties)**

Health Services Executive (HSE)  
St James Wood Management Co.  
Jane, Ciaran and Sinead Joyce.  
Ruth Cassin, Mark, Sarah and Emily  
Lawler.  
South Circular Road Residents'  
Association  
Anthony and Margaret Hyland  
Muriel Hewitt,

**Date of Site Inspection**

1<sup>st</sup> September, 2021.

**Inspector**

Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The site which is 'L' shaped and has a stated area of circa 2500 square metres is located at the western end of the South Circular Road close to the junctions with Bulfin Road/Suir Road to the south and with Old Kilmainham and Emmet Road to the north. At the western frontage onto South Circular Road there is a nineteenth century detached two storey three bay house set behind a front garden in through which there are steps to the front entrance and, gates and railings on the frontage and there is a laneway and access to the north side. The house is connected at the rear to a two-storey building, brick faced building with two over two timber sash windows at the rear within an enclosed yard and original joinery within the interior which based on visual inspection predates the house to the front of the site. At the time of inspection, there were six residents occupying the property.
- 1.2. At the rear and side extending northwards the grounds within the site are enclosed by high walls on the west and eastern boundaries and lower walls and hedgerows on the north and south boundaries. The northern 'leg' of the site has uneven ground with overgrown scrub vegetation and falls towards the north.
- 1.3. To the south the site adjoins rear garden boundaries of residential properties facing onto South Circular Road. (Nos 702 – 724 evens.) To the rear east side is an apartment development. (St James Wood) in a number of blocks with circa 120 units. To the northwest the site adjoins the boundaries of properties at Nos 1-6 Prospect Terrace and Nos 730 – 734 South Circular Road (evens) Nos 730 and 732 being in use as a day hospital (St Martha's) and, properties facing onto Old Kilmainham close to the junction with Emmett Road and South Circular Road are located to the north and northwest. The corner site of Old Kilmainham with The South Circular Road there is an ant grant of permission for an apartment development.
- 1.4. The structure is in poor although sound condition meriting significant repairs to address dry rot, moisture ingress from the roof and rising damp decay and cracking interior has considerable surviving plasterwork and joinery
- 1.5. The location is on a bus lane and served by several four bus routes and under the Bus Connects Scheme, it will be on a radial route fora Quality Bus Corridor with the Route 7.

## **2.0 Proposed Development**

### **2.1. The application is for a development of twenty-three dwelling units comprising:**

Removal the two storey return of the existing nineteenth century house and its renovation and conversion to two apartments

Construction of three, three bed two storey houses at the northern, rear end of the site (a pair of semidetached and one detached house) at the northern end of the site. (Block A)

Construction of a four-storey block containing eighteen apartments, (eight one bed and ten two bed units with balconies on east and west elevations, a west facing communal roof terrace.

A new vehicular access point located off South Circular Road, surface carparking for fourteen spaces, and fifty bicycle parking spaces and,

All associated site development works, landscaping, boundary treatments, public open space (c. 150m<sup>2</sup>), pedestrian/cycle access from South Circular Road, infrastructural connections and refuse storage.

The stated site coverage is 29 percent and stated plot ratio is 0.68 resulting in density of circa 92 units per hectare.

Foul and Surface water drainage is to the existing 375 mm diam. sewer in the South circular Road a combined sewer and SUDS measures are included for surface water design which incorporates a hydro brake flow control with attenuation tanks.

Included with the application is a daylight and sunlight study, design statement, architectural heritage impact statement, outline construction management plan, floor risk assessment, mobility management plan, engineering assessment report, landscape design statement, and verified views/CGI images.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated, 1<sup>st</sup> April, 21021 the planning authority decided to refuse permission based on the following reason:

*“Having regard to the Z1 land use zoning objective, the pattern of development in the area and to the form, bulk and height of the proposal and the separation distances to the rear of adjoining properties, it is considered that the proposed development would have an excessively overbearing effect on adjoining property and would unduly overlook third party communal and private open space. Furthermore, it is considered that the high-level bedroom windows would result in an unacceptably low level of residential amenity for the occupants of House Types A and B. The proposed development would therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.”*

### 3.2. Planning Authority Reports

- 3.2.1. The report of the **Roads and Traffic Planning Division** dated, 25<sup>th</sup> March, 2021 indicates a recommendation for a request for additional information the location of the vehicular entrance due to restricted visibility and close proximity to a pedestrian crossing, requirements for a stage 1 RSA and a swept path analysis, and a review of arrangements providing for pedestrian priority across the site entrance.
- 3.2.2. The report of the **Drainage Division** dated; 23rd February, 2021 indicates a recommendation for conditions of a standard nature to be attached if permission is granted.
- 3.2.3. The report of the **City Archaeologist** dated 24<sup>th</sup> March, 2021 indicates a recommendation for an archaeological impact assessment include test trenching to be prepared.
- 3.2.4. The **Planning Officer** in his report states that the current proposal is relatively similar to the previously unsuccessful proposal for a larger, fifty-three-unit development under P. A. Reg. Ref. 4455/19 and indicates several concerns about the current proposal, noting proximity to boundaries, undue overlooking and overbearing impacts on the adjoining property and poor outlook and aspect from some units.

### 3.3. Third Party Observations

- 3.3.1. Multiple observations were lodged at application stage in which the concerns indicated relate to construction stage impacts on residential amenity, overdevelopment and excessive density scale and height, close proximity to boundaries with adjoining properties and overshadowing and overlooking. Some of these parties have also lodged observations with the Board in connection with the appeal.

## 4.0 Planning History

**P. A. Reg. Ref. 1880/07:** Permission was granted for demolition of rear extension and outbuildings at No 726 and partial removal of roof to provide for three storey development of thirty-seven apartments in five blocks at Nos 726 and 734 South Circular Road.

**P. A. Reg. Ref: 3672/13 (PL243410):** Following appeal, Permission was granted for development at rear of Nos 726 South Circular Road and Nos 730-734 South Circular Road for construction of 8 no. 3 & 4 bed houses, demolition of the existing outbuildings on site and part of rear extension to No. 726 South Circular Road a new vehicular access entrance off South Circular Road, all associated site development works, bin storage, surface car parking and open space all on a site area of 2,000 square metres.

**P. A. Reg. Ref. 3950/14:** Permission was refused for demolition of No. 726 South Circular Road, and construction of 3 no. 2-3 storey 4 bed terraced houses, all associated site development works, access, car parking and open space and involving modifications to a previously permitted development under P A. Reg. Ref. 3672/13 (PL243410)

The reasons for refusal are reproduced below.

*“1. Number 726 is a historic house of considerable architectural quality, and is worthy of retention as it adds significant character and heritage to the streetscape, visual amenities and surroundings of Kilmainham Crossroads/ Village and, for these reasons, the proposed demolition of No. 726 materially contravenes the policies and objectives of the City Development Plan as set*

*out in section 7.2.5.1 and 17.10.5 as the retention and reuse of No. 726 would makes a positive contribution to both the streetscape and sense of place of this part of Kilmainham Village/crossroads. Due to the importance of the historic house as a visual amenity and in the streetscape, the proposed demolition of No.726 would contravene materially policy QH20 as it does not satisfy streetscape, environmental and amenity considerations and is therefore, contrary to the proper planning and sustainable development of the local area.*

*2. The proposed three large houses do not meet the standards in regard to the provision either of private open space or public open space and the proximity of the proposed houses to the gable of the approved unit granted permission under Plan No 3672/13 would result in undue overshadowing and overbearing aspect to the rear of the proposed houses; for these reasons the proposed development would seriously injure the residential amenities of future occupiers and would be contrary to the proper planning and sustainable development of the local area.*

*3. The design and features of the proposed three houses, due to the character of the streetscape and historic buildings in the vicinity at this location would be incongruous in the streetscape and would be detrimental to the visual amenities of the local area and, therefore, would be contrary to the proper planning and sustainable development of the area.”*

**P. A. Reg. Ref 3870/14:** Permission was granted for construction of 3 no. 3 bed houses, comprised of 1 no. 2-storey detached house & 2 no. 2-storey semi-detached houses, parking, open space and site development works involving modifications to a previously permitted development under Reg. Ref. 3672/13 (PL.243410) at number 726 South Circular Road and to the rear of Numbers 730-734 South Circular Road.

**P. A. Reg. Ref. 3710/15;** Permission was refused for the conversion of an existing single dwelling into two 3- & 4-bedroom dwellings, along with 2 storey extensions to the sides (i.e., northern and southern gables) of c.74sq.m. including partial demolition of an existing rear return, car parking spaces, landscaping, retention of



existing front boundary treatment and access, and all associated site development works based on the following reason:

*“The proposed extension and subdivision of the historical classically fronted villa is contrary to best conservation practice and detrimentally undermines its original form, character and setting. Having regard to this and to the provisions of the Dublin City Development Plan (2011- 2017) including Appendix 25, the proposed development would be out of keeping with the historic character of this distinctive nineteenth century house and would detract from its setting and integrity, thus being contrary to the visual amenities of the area, to development plan provisions and to the proper planning and sustainable development of the area.”*

**P.A. Reg. Ref. 4466/19:** Permission was refused for a “Build to Rent” residential scheme consisting of the construction of 53 no. apartments in blocks, including an extension to the existing building at No 726 South Circular Road with partial demolition of the existing return, conversion for two apartments and residential support and vehicular access to a thirty one space basement car park a new vehicular entrance off South Circular Road all associated site development works, landscaping, boundary treatments, pedestrian/cycle access from South Circular Road. The reasons for refusal are reproduced below:

*“1. Having regard to the established pattern of development in the area , the L shaped nature of this site which adjoins primarily residential/institutional uses, and the existing historic building at number 726 South Circular Road, it is considered that the proposed development due to the height, scale and bulk of the various blocks on this site, would result in overdevelopment of the site, overlooking and overshadowing of adjoining properties, and may prejudice the development potential of adjoining sites by reason of proximity of windows/balconies to boundaries. The proposed development would therefore seriously injure the residential amenities of the adjoining sites and would detract from the character and setting of number 726 South Circular Road which although not a protected structure is identified on the NIAH as being of Regional interest. The proposed development would thereby be contrary to the proper planning and sustainable development of the area.”*

*“2. Having regard to the height, massing and location of windows and balconies of Block C to adjoining rear gardens of number 1 -6 Prospect Terrace, number 8 Ashmount Court, the rear of properties at numbers 732-734 South Circular Road, and apartments at St. James Wood Complex, it is considered that this would seriously injure the residential amenities of these properties, through overlooking and overshadowing and also provide poor quality of residential amenities for the future occupants of the Build to Rent units. The proposed addition of Block A to the north of number 726 South Circular Road, which incorporates the entrance to the underground car park, is poorly designed and would detract from the character and setting of this important historic building. The proposed design of Block B, having regard to its height, massing and proximity and location to adjoining boundaries, and design of the two storey pedestrian/bicycle walkway to the north of the block along the side boundary wall with number 730 South Circular Road would seriously injure the residential amenities of the existing properties ,resulting in poor quality residential units which would be detract from the character and setting of the historic building at number 726 South Circular Road and contrary to the proper planning and sustainable development of the area”.*

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site is subject to the zoning objective Z1: *“To protect provide and improve residential amenities.” The indicative plot ratio is 0.5-2.0 and indicat3ve site coverage is 45-60 per cent.*
- 5.1.2. Policy QH5 seeks to promote residential development addressing any shortfall in housing provision through active land management and co-ordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites, and underutilised sites.
- 5.1.3. Policy QH7 seeks to promote residential development at sustainable urban densities throughout the city in accordance with the core strategy having regard to the need

for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

- 5.1.4. Policy QH8 seeks to promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and character of the area.
- 5.1.5. Development management standards are in Chapter 16. Policies and standards for Infill development is set out in section 16.10.10. Design Principles are provided for in section 16.2.1 and for residential quality standards in section 16.10.3. and within Parking Zone 2 for which according to section 16.1 there is a maximum requirement for one space per residential unit.
- 5.1.6. The location is at the edge of the Zone of Archaeological Constraint for recorded monument DU018-020 (History City)

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

- 5.2.1. The Apartment Guidelines provide for the following:
  - To enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas.
  - Make better provision for building refurbishment and small-scale urban infill schemes.
  - Address the emerging build to rent and shared accommodation sectors.
  - Remove requirements for car parking in certain circumstances where there are better mobility solutions to reduce costs.
- 5.2.2. According to the guidelines: the most suitable locations are central and/or accessible urban locations such locations are generally suitable for small to large scale higher density development that may wholly comprise of apartments such as within walking distance of the principle city centres or significant employment locations that may include hospitals and third level institutions, sites within reasonable walking distance (i.e. up to 10 minutes or 800 metres to 1,000 metres) to/or from high capacity urban

public transport stops such as Dart or Luas and sites within, easy walking distance (i.e. up to five minutes to and from high frequency urban bus services).

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

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

According to Special Planning Policy Requirement 2 (SPPR 0, in driving general increases in building heights, Planning Authorities shall also ensure appropriate mixtures of uses, such as housing, commercial and employment development, are provided for in the statutory plan context.

### 5.3. **Development Plan**

- 5.3.1. The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site is subject to the zoning objective Z1: *“To protect provide and improve residential amenities.”*
- 5.3.2. Policy QH5 seeks to promote residential development addressing any shortfall in housing provision through active land management and co-ordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites, and underutilised sites.
- 5.3.3. Policy QH6 seeks to encourage and foster the creation of attractive mixed use, sustainable neighbourhoods which contain a variety of housing types, tenures with supporting community facilities, public realm and residential amenities which are socially mixed in order to achieve a socially inclusive city.

- 5.3.4. Policy QH7 seeks to promote residential development at sustainable urban densities throughout the city in accordance with the core strategy having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.
- 5.3.5. Policy QH8 seeks to promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and character of the area.
- 5.3.6. Policy QH18 seeks to promote the provision of high-quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and with each apartment development, and ensuring that suitable social infrastructure and other support facilities are available in the neighbourhood, in accordance with standards for residential accommodation.
- 5.3.7. Policy QH19 seeks to promote the optimum quality and supply of apartments for a range of needs and aspirations, including households with children, in attractive sustainable mixed income, mixed use neighbourhoods supported by appropriate social and other infrastructure.
- 5.3.8. Development management standards are in Chapter 16. Design principles are in section 16.2.1 and residential quality standards for apartment are in section 16.10.1 Policies and standards for Infill development is set out in section 16.10.10.
- 5.3.9. Section 16.10.17 provides for active consideration of retention and re-use for old buildings not subject to statutory protection but with historic, architectural, cultural artistic or local interest or buildings which make a positive contribution to the character and identify of streetscapes and sustainable development.

The site location comes within an area classified as Flood Zone C. according to the SFRA.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. An appeal was lodged by Delphi Architects on 27<sup>th</sup> April, 2021 attached to which are copies of notes on pre planning consultations with the planning authority, and a

statement by the consulting engineers for the applicant. The submission includes a detailed discussion of the planning history, context and the current proposal.

6.1.2. According to the appeal:

- The site is infill, brownfield and centrally located and the proposal is an efficient use for the zoned and serviced site and improves the environment and responds to the demand for housing. Careful consideration has been to the locational context and configuration given to the prior planning history.
- The reason for refusal does not directly state that the development materially contravenes Policy Objectives of the CDP: SC 26, QH5, QH8, QH13 and sections 16.2.1 and 16.10.1 Residential Quality Standards of the CDP.
- The proposed development complies with SC26 with the contemporary buildings responding to the immediate environs and adjoining properties
- The proposed development complies with QH5 in that the lands are zoned, serviced, centrally located and infill.
- The proposed development complies with QH8 in that it is a sustainable in density, design and tenures.
- The proposed development complies with QH13, in that the development is suitable for a range of tenures: downsizers, professionals and small families and market demands.
- The proposed development complies with QH21 in that qualitative standard are met for the houses.
- The zoning objective permits residential development irrespective of the site's irregular shape, the dwelling and the planning history and adjoining properties must be taken into consideration.
- There are varying typologies and heights in the vicinity: - two and three storeys and existing and permitted four storey apartment blocks. (Details and images are provided.) The proposed development is a well-designed efficient infill development opening up to the public realm and respecting and complimenting surrounding development.

- With regard to form bulk and height, permission should be granted for the conversion of the existing dwelling, (Block A) as no concerns are raised in the planning officer report.
- Block B is acceptable in terms of height as indicated in the pre planning notes. There is an increase in setback from adjoining properties compared to the previous proposal, high level windows are on the south elevation to address overlooking and bedroom windows are omitted from the gables so that the properties at Nos 706-724A are not overlooked. (P. A. Ref. Ref. 4466/19 refers).
- The three houses are similar to those permitted under P. A. Reg. Ref. 3671/13 and 3870/14 and do not overlook adjoining properties. They are appropriate and permission should be granted.
- The original grant of permission under P. A. Reg. Ref. 1880/07 was for a  $\frac{3}{4}$  storey block in the south-east corner with minimal separation distances from boundaries. (Images are provided.) The design for a similar block under P. A. Reg. Ref. 4466/19 included a separation distance of 2.1 metre from the south boundary and this has been responded to in the current application with an increase in separation distance to 3.5-3.6 metres to the east and 3.5 – 3.9 to the south with reduced height, high level windows and timber screens for balconies which are on east and west elevations, and improved elevations and layouts to minimise overlooking to the private and communal spaces and private properties to the south. These separation distances, having regard to the planning history should be acceptable to the Board. (Images are provided.)
- The design for Block B does not have overbearing impact or adverse visual impact on the area by reason of form bulk and height. It is acceptable having regard to section 2.23 of the Apartment Guidelines, to the permitted development at the junction of Old Kilmainham Road and is appropriate in setback and height relative to adjoining properties and the area. With regard to *Sustainable Residential Development in Urban Areas* (2009), section 5.9 (i) a reasoned balance has been reached in protecting amenity and privacy of

adjoining properties and the area and the need to provide residential infill back land development in a centrally located site.

- The submitted daylight and sunlight study concluded that the impact on daylight and sunlight to surround properties is favourable: For Vertical Sky Component, 164 of 166 windows assessed would have imperceptible change with the remaining window having slight impact. For Annual Probable Sunlight Hours (APSH) the effect for 21 windows with an orientation within 90 degrees of due south (at St James Woods) would have imperceptible impact minimum standards in BRE Guidelines being achieved.
- In the assessments of levels of sunlight, on 21<sup>st</sup> March, on three areas of rear private open space at Nos 734 and Nos 730/732 South Circular Road and St James Woods the impact is imperceptible with 100 percent compliance with the standards in the BRE guidelines.
- The outdoor amenity spaces within the development of which there are two have also been assessed and the level of sunlight meets minimum standards in the BRE Guidelines for 21<sup>st</sup> March.
- With regard to the standards of residential amenity attainable for the occupants of House A and B, due to the high level of the windows, the issue could be resolved by replacement with normal sized opaque glazed windows in compliance with a condition. The principle for the proposed windows was established by way of prior grants of permission under P. A. Ref. Ref. 3870/14 and 3672/13. (Images are provided.) It is requested that permission be granted for any required modifications for fenestration being conditioned.
- There is minimal visual impact (in verified view) from the traffic junction to the northwest and west of the site on the streetscape and adjoining properties.

6.1.3. It is requested that permission be granted with outstanding matters being addressed either by condition or by a request in a request for revisions and modifications to be submitted.

6.1.4. The submission also includes an account of the preplanning consultations and the observations.



6.1.5. According to the accompanying submission from Waterman Moylan the recommendations of the Roads and Traffic Planning Division relate to minor issues only which have been addressed by way of a request for additional information.

- With regard to the relocation of the entrance due to impact on the pedestrian crossing and limited visibility envelope, the proposed location was approved in the grant of permission under P. A. Reg. Ref. 3672/13.
- the applicant is willing to undertake, at its expense, with regard to the pedestrian crossing and/or supplementary signals or to relocate the entrance, with a clear route also for pedestrians, to remove a tree and relocate of the cycle parking location.
- The applicant is also willing to submit a stage 1 RSA if and when the proposed entrance arrangement is confirmed. and is also willing to provide a relocated “STOP” sign in respect of the pedestrian crossing and pedestrian priority. (Images are provided.)
- A diagrammatic swept path analysis for a car is provided in the submission

## 6.2. **Planning Authority Response**

There is no submission from the planning authority on file.

## 6.3. **Observations**

6.3.1. Observations were lodged by the following parties and the contents are outlined below.

Health Services Executive (HSE)

St James Wood Management Company.

Jane, Ciaran and Snead Joyce.

Ruth Cassin, Mark, Sarah and Emily Lawler.

Anthony and Margaret Hyland

Mary Kearney

Muriel Hewitt

### 6.3.2. **Health Services Executive (HSE)**

The HSE which is the owner of the adjoining property at Nos 730 and 732 South Circular Road at which it operates a Day Hospital, a mental health facility. The application site is to the west south and east of this property. According to the submission:

- Day hospital operated by the HSE, being a mental health facility is a very sensitive use at the property adjoining the application site.
- The proposed development would cause significant overlooking of the HSE property, especially the rear amenity space. The proposed Block B has windows for main living space on the north elevation at 6.6 metres from the communal gardens at the HSE facility. This would have serious negative impact on the HSE facility and this is noted in the observations with regard to overlooking in the planning officer report.
- This concern is not addressed in the appeal and little regard is shown for the impact on the facilities operated by the HSE.

### 6.3.3. **St James Wood Management Company.**

St James Wood is a 119-unit apartment development located to the eastern side of the application site which was constructed circa 2000. According to the submission:

- The current proposal does not address the concerns regarding to previous proposal notwithstanding the reduction in number of units proposed.
- Block B is located too close at 3.5 metre to the eastern boundary
- Fire Services tenders would have difficulty in gaining access.
- The four-storey height (12.5 metres is excessive and in effect, similar in effect to the prior (unsuccessful) five storey proposal in that the ground level is higher in the current proposal.
- Windows and balconies will overlook the St James Wood development and its gardens used by residents, is visually obtrusive and will give rise to light pollution and noise.

- Block B in design is incompatible with the character of the low-rise character of the area. A smaller two and two and a half storey format would have been suitable.
- Block B will also overshadow in addition to having overbearing impact on St. James Wood's residents' garden and properties especially in winter months. It was not possible to review the submitted shadow analysis within the observation period.
- Boundary wall height is misrepresented in the drawing D1303-PS04.

#### 6.4. **Ruth Cassin, Mark, Sarah and Emily Lawler.**

This party resides at No 708 South Circular Road to the south of the application site.

According to the submission: -

- Development on brownfield lands such as the application site is supported in principle but have several objections to the current proposal
- The planning authority decision is supported.
- Residential amenity in the established area is not protected by the proposed development.
- The proposed development would dwarf the properties on South Circular Road.
- The density is excessive
- Block B is monolithic and too close to the boundary with No 708 South Circular Road. The development is not a compact well-designed, high-quality scene as indicated in the appeal.
- It is not agreed that there are other developments that provide precedent for the proposed development
- Light to the South Circular Road properties would be obstructed
- Apartments 8, 9 and 18 and a communal space will overlook the rear garden of No 708 South Circular Road. The distance at seventeen metres between proposed windows and windows in that No 708 South Circular Road is deficient because twenty-two metres is required.

- Knotweed in the application site could affect third party properties
- The drawings have inaccurate dimensions.
- The building at No 726 South Circular Road should be retained and reused as provided for in section 15;120.3 of the CDP.
- The insufficient quantum of parking for the proposed development will lead to significant overspill parking on the street where there are insufficient spaces.
- The new entrance for the proposed development will compromise one of the two short term parking lay byes which are on a busy orbital route.
- There will be needless effect on the streetscape by destruction of trees protected under Policy R06 of the CDP.
- Construction management plan details are insufficient and there are serious concerns about disruption to residential amenities and convenience in the local community.

#### 6.4.1. **Anthony and Margaret Hyland, No 714 South Circular Road.**

This property is to the south of the application site and according to the submission:

- Development on brownfield lands such as the application site is supported in principle but have several objections to the current proposal.
- Construction stage impacts on residential amenities and convenience for existing residences.
- Invasive species – knotweed, which during works could affect adjoining properties.
- Overdevelopment at northern and southern end of site at rear of Nos 706-724 SCR
- Excessive density
- Dwarfing adjoining properties – four storey block too close to boundary with No 714 affecting the amenities of the rear garden in particular
- Overshadowing at existing properties.

- Existing house is worthy of retention and re-use. as intended in section 15.120.3 of the CDP for historic structures not on the RPS.
- Overspill parking onto the streets and SCR and arterial route where traffic volumes and demand for parking will be exacerbated by further development that James Hospital. The proposed entrance will compromise one of the two short term parking / stop over bays. Traffic especially services traffic using the entrance may block traffic flow on the SCR
- Effect on existing Trees on SCR protected under Policy R06 of the CDP

**6.4.2. South Circular Road & Kilmainham Residents Association, (c/o Mary Kearney)**

According to the submission:

- The proposed development's new access would create significant additional traffic on the main artery road for St. James Hospital and it cannot be sustained and it is adjacent to the pedestrian crossing. The existing entrance should be retained. There are serious concerns about the lack of parking provision for the employees of for the new children's hospital a St James. Construction traffic would also be at issue in this regard.
- The construction hours are longer than those required by the City Council for construction projects ad will affect residential amenities
- The four-storey block is too close to the properties on the South Circular Road (to the south) Overlooking will occur from the windows and balconies and from the roof garden which should not be permitted. Tree planting should be carried out near the boundary with these properties.

**6.4.3. Muriel Flewitt,**

Ms Flewitt resides at No 712 South Circular Road to the south of the appeal site.

According to her submission, Ms Flewitt has strong objections to the proposed development on grounds of excessive density, excessive height and bulk, encroachment on the rear garden of No 712 South Circular Road resulting in loss of privacy and residential amenity.

## 7.0 Assessment

- 7.1. The issues central to the determination of a decision can be considered below under the following subheadings.

Development in principle

Scale, Height, Mass, Layout and Design and impact on Residential amenities.

Architectural Heritage

Archaeological Heritage

Traffic impact, on-site parking and entrance arrangements.

Drainage and Water Supply

Invasive Species

Environmental Impact Assessment – Screening.

Appropriate Assessment Screening

### 7.2. Development in principle.

- 7.2.1. The site is an infill and is substantively a back land with the benefit of the Z1 zoning objective and it is serviced and located close to the city centre and to transport including a transport corridor, centres of employment and all services and facilities. In principle, a sustainable residential development is to be encouraged but there are constraints to the development potential as is evident from the planning history which are discussed below. There is no dispute that the site is a serviced brownfield, infill inner urban site which is underutilised.
- 7.2.2. In the appeal it is claimed that the application addresses the issues raised in pre-planning consultations, issues arising in prior refusals of permission, consistency with prior grants of permission and national and local strategic policy and relevant development management standards.
- 7.2.3. The site has an extensive planning history as outlined in section 4 above including, as pointed out in the appeal, the application site had the benefit of a grants of permission for eight dwelling units, subsequently modified to eleven units not implemented or commenced prior to the expiry. (P. A. Reg. Refs 3672/13 (PL243410) and 3950/14 refer.) The relevance, of the expired grants of permission

is very limited in that the current proposal is not comparable, being a twenty-three-unit development more similar to the previous unsuccessful proposals. The applicant seeks to overcome the issues over which permission was previously refused, is considered below on its own merits having regard to current statutory policy and the site context.

- 7.2.4. With regard to justification for the proposed development, it is not agreed that the permitted development for the site at the junction of Old Kilmainham to the north is comparable particularly with regard to Block B in that the site of the permitted development is not similarly constrained with regard to the existing development in the immediate environs and, has greater capacity to accept a four to five storey apartment development.

7.3. **Scale, height, Mass, Layout and design and impact on residential amenities.**

- 7.3.1. The current proposal comprises removal of the two-storey building at the rear of the existing house, alterations to and conversion of the existing house to two, two bed apartments, construction of three, three bed houses towards the northern end of the site (Block A and an apartment block with eighteen one and two apartments in the south-eastern section of the site (Block B) along with a new entrance and access road communal amenity space and car and cycle parking. Below Block A and Block B are considered separately below whereas the proposals for the existing house and two storey building to its rear area considered separately under section 7.4 “Architectural Heritage”.

- 7.3.2. Within the overall scheme, the dwelling mix is considered reasonable in terms of the mix of one, two and three bed units overall within the scheme. Other than the concerns with regard to fenestration for the windows for the semi-detached pair of three-bedroom houses, as discussed under para 7.3.4 and two units in Block B were ground floor windows which would have a substandard average daylight factor the internal layout and sizes are considered acceptable with those of the one and two bed apartments being accordance with the minimum standards in The Apartment Guidelines for the one and two bed apartments.

7.3.3. Block A:

It is agreed with the planning officer that the amenity potential of the internal accommodation at first floor level lit solely by the high-level windows lacking in

outlook would be inadequate. The upper-level windows in the front elevation of House B would directly overlook the rear communal space to the properties at No 734 South Circular Road at which full protection of privacy of service users is essential due to the sensitivity of the use of the buildings which is referred to in the observer submission of the HSE. At present these grounds benefit from screening by trees and vegetation on the application site and a boundary wall.

7.3.4. The alternative proposals in the appeal to address the concerns described above which are shared by the planning officer are also considered inadequate in that the bedrooms involved would be solely dependent on opaque glazed fenestration.

7.3.5. On review of the footprints and site layout, it would appear that with omission of House type B and repositioning of the pair of semi-detached dwellings (Type A) these concerns with regard to adverse impact on third party properties could be overcome and a satisfactory level of attainable residential amenity both in quality of internal accommodation and private open space would be feasible.

7.3.6. Block B.

The current application provides for a modified proposal for a four-storey apartment block for Block B in substitution for a five-storey block in a similar location on the site to the previous unsuccessful proposal at the south eastern end of the site to the rear of the existing house, with communal space in the form of a roof terrace and a linear space adjoining the east boundary and between the west elevation and rear, east elevation of the existing house in which two apartments are to be provided.

7.3.7. As stated in the planning officer report the separation distance from the southern boundary with the rear gardens of residential properties facing onto the south side of South Circular Road is circa 3.5 metres. The separation distance of the rear facades of the dwellings for these dwellings to the rear garden boundaries is circa 18 to 19 metres whereas the separation distances from rear returns is circa twelve to thirteen metres although some properties have additional development to the rear. Block B given its height and mass of a mainly solid elevation would be somewhat overbearing on those properties which are directly to the rear due to the proximity to the rear garden boundaries notwithstanding the separation distances from the dwellings.



- 7.3.8. There is no objection to the incorporation of high-level windows for the south elevation which mitigates overlooking of adjoining properties in that the main fenestration for the living room areas of the apartments are on east and west elevations.
- 7.3.9. Similarly, it is agreed with the planning officer that in view of the proximity to the east boundary, the mass, scale and height of Block 2 would be overbearing on the adjoining apartment development at St James Wood with upper floors giving rise to overbearing impact, overlooking and perceptions of overlooking towards Nos 1-42 St James Wood apartments laid out in three interlinking blocks overlooking a central landscaped communal amenity space. The impact is not reciprocal owing to the proximity of the proposed block to the boundary at 3.6 metres with east facing façade facing and directly overlooking from, levels about the boundary wall towards the front elevations of the central west facing block and perpendicular block which overlook communal open space with St. James Woods.
- 7.3.10. Furthermore, it is agreed that the potential for overlooking and intrusiveness into the privacy of the communal garden space at the rear of the adjoining HSE property, St Martha's to the north would be adversely affected by Block B for similar reasons of overbearing impact owing to the height scale and mass and separation distances from the party boundaries at six metres and overlooking and perceptions of overlooking from the balconies and the roof garden.
- 7.3.11. The sunlight and daylight analysis submitted with the application provides for a methodology and an assessment for March 21<sup>st</sup>, where relevant for adjoining properties, the existing dwelling and proposed development for Vertical Sky component (VSC) average probable sunlight hours, (APSH) and average daylight factor (ADF) in accordance with BRE standards. (Site Layout Planning: Daylight and Sunlight a Guide for Good Practice BS 8206) It is considered that the study is comprehensive in the extent and range of properties and external amenity areas assessed and with regard to the proposed development and that it is satisfactorily demonstrated that the impacts of the proposed development relative to the pre-development conditions, where relevant, exceed targets specified in BRE guidance. with, within the proposed development, it is shown that the ADF for four ground floor windows the equivalent of 8 percent of total windows being below minimum standards.

7.3.12. In view of the foregoing the reasoning for the decision to refuse permission by the planning authority is supported.

#### **7.4. Architectural Heritage**

7.4.1. The retention, refurbishment and conversion re-use of the main house to two apartments within the overall development is welcome. While not of outstanding architectural heritage merit it is clearly apparent that it is of special interest and the planform and significant historic plasterwork and joinery has survived as is shown in the images provided in the submission by the applicant's conservation architect. The subdivision as proposed does allow for substantive retention of the historic fabric and planform which provides for good quality spacious internal accommodation for two households.

7.4.2. However, it would be more appropriate for the two units to be accessed by the front entrance, and for the rear openings and balconies at the rear to be avoided in the interest of protection of integrity and character. Potentially, the two dwellings could be serviced by communal open space on site and it is noted that the location is very close to high quality public open space amenity spaces such as Kilmainham and the Memorial Gardens benefitting residents.

7.4.3. However, While the existing structures, (the main house and two storey building to the rear) are not included on the record of protected structures it is considered that they are both of special architectural heritage merit and that this can be confirmed by way of reference to the 'regional' rating within the NIAH survey. The proposed removal of the two-storey building at the rear, enclosed by historic walling is regrettable given its somewhat unusual form and footprint and the extent and range of original fabric materials and features which include brickwork facades, two over two sash windows, joinery internally and original cast iron rainwater goods.

7.4.4. It is apparent that this building was used for human habitation but that the option for retention and adaptation of this building for contemporary residential use was not investigated and considered prior to lodgement of the application. The interconnection with between the two buildings is somewhat unusual and possibly not original and it may be appropriate to establish whether the rear building might predate the main house. It is noted that outbuildings are shown on OS maps from 1960s which may have formed part of a complex.

- 7.4.5. It is noted that the NIAH survey for the city is not available for public inspection at present and, given that the buildings are not included on the record of protected structures there is no report by the conservation officer with comments and recommendations. In the event of a grant of permission for development on the site allowing for the removal of this building it is recommended that a building history and survey to be conducted and a report with an assessment to be prepared by a person with relevant expertise which can be taken into consideration and that materials to be salvaged and/re-used as a feature in development on the site where possible.

**7.5. Archaeological Heritage.**

- 7.5.1. In the event that of possible favourable consideration of the proposed development, it is also recommended that a comprehensive archaeological impact assessment report prepared by a licensed archaeologist be prepared, to include site testing investigative works with prior consultation with the city archaeologist. It is noted that that a condition to this effect has been included in the report of the City Archaeologist on file. The site location would appear to be particularly sensitive given the location and the proximity to the boundary of the zone of archaeological constraint for recorded monument DU018-020 (History City)

**7.6. Traffic impact, on-site parking and entrance arrangements.**

- 7.6.1. The site, which substantively can be regarded as a back land and/or infill site and, with the retention of the existing house there is very limited scope for provision for access consistent with technical standards off the South Circular Road a main arterial route close to junctions to the north and south and servicing local neighbourhood facilities. As noted during the course of the inspection and explained in the report of the Transportation Planning Division, the visibility envelope is obstructed by existing trees the removal of which should be avoided, there is potential conflict with a pedestrian crossing adjacent to the location, with right turning off the carriageway where there is a continuous white line along the centre, there are issues as to clear and distinct, routing for pedestrians/cyclists, signage, materials and surfaces routing and priority for pedestrians and services vehicles, swept path analysis and stage 1 Road safety audit.
- 7.6.2. These matters are considered within the appeal submission by the applicant's consulting engineers but it is apparent that a more comprehensive detailed

submission would be required. The remarks as to the acceptance of the proposed arrangements in connection with the prior successful smaller scale and lower density proposal for eight units under P.A. Reg. Ref. 3672/13 which is noted. The entrance in the current proposal includes shared cycle parking spaces as opposed to the previously approved single use footpath and road surface.

7.6.3. There is no objection to the proposed retention of the existing entrance and lane, for pedestrian and cyclist use is acceptable and it is noted that there are no comments on this proposal within the report of the Transportation Planning Division.

7.6.4. Parking provision at approximately one space per two units is reasonable, but consideration could be given to whether the location is suitable for a 'zero-parking' development given the constraints with regard to scope for vehicular access and the desirability to limit trip generation and turning movements onto and off the carriageway. The location is particularly well serviced by public transport, and other alternative means of transport as well as proximity to services and facilities and employment centres.

#### **7.7. Drainage and water supply,**

7.8. There are no issues arising in connection with drainage and water supply, the site location being within an area designated as Flood Zone C and SUDs measures which include attenuation being proposed. Finalisation of details can be addressed by condition.

#### **7.9. Invasive Species**

7.9.1. Observer parties have indicated concerns as to the presence of invasive species within the site area. In the event that permission is granted for the proposed development, the applicant, through a comprehensive construction management plan to be prepared on appointment of a contractor and prior to commencement of development can be required to have the site surveyed and if necessary, implement appropriate measures for protective measures to be in place during site clearance and preparatory works.

#### **7.10. Environmental Impact Assessment – Screening.**

7.10.1. Having regard to the minor nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features,

there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.11. Appropriate Assessment Screening.**

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

### **8.0 Recommendation**

- 8.1. In conclusion, it is recommended that the planning authority decision to refuse permission be upheld based on the reasons and considerations which follow below. In addition, a reason has been included regarding arrangements for vehicular access.
- 8.2. It also considered advisable that a building history, survey and assessment report on the existing two storey building at the rear of the main house on the site should be available.

### **9.0 Reasons and Considerations**

1. Having regard to the Dublin City Development Plan, 2016-2022 according to which the site is within an area subject to the zoning objective Z1: *“To protect provide and improve residential amenities”*, to the back-land location and configuration of the site and the established pattern and character of existing development in the surrounding area the proximity to the boundaries with adjoining properties, to scale, mass and height of Block B, it is considered that the proposed development, would be overbearing on properties to the east (St James Wood) and south (South Circular Road);, due to the position of fenestration and balconies of Block B, and House B (within Block A) would overlook and give rise to perceptions of overlooking of adjoining property (St Martha’s) to the west and from Block B to the east to adjoining property (St James Wood) to the east. As a result, the proposed development constitutes

substandard overdevelopment which would seriously injure the residential amenities and privacy of adjoining development and would be contrary to the development objective and to the proper planning and sustainable development of the area.

2. On the basis of the submission made in connection with the application and the appeal it is considered that it has not been satisfactorily demonstrated that the proposed development would not endanger public safety by reason of traffic hazard having regard to the proposed arrangements for vehicular access to and from the development from the South Circular Road. It would therefore be inappropriate for the Board to consider a grant of permission for the proposed development in these circumstances

**Jane Dennehy**  
Senior Planning Inspector  
8<sup>th</sup> September, 2021.