



An
Bord
Pleanála

Inspector's Report ABP-310135-21.

Development	Demolition of existing 2 storey detached house and construct a terrace of 5 x 3 storey houses together with bin store, bike rack and new entrance wall and railing including widening of existing vehicular access and 6 car parking space and landscaping.
Location	Kedleston, No. 60, Inchicore Road, Kilmainham, Dublin 8.
Planning Authority	Dublin City Council South.
Planning Authority Reg. Ref.	2223/21.
Applicant(s)	Caroga Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v Refusal
Appellant(s)	Caroga Ltd.
Observer(s)	15 Observers.
Date of Site Inspection	26/07/2021.
Inspector	A. Considine.

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1.0 Site Location and Description

- 1.1. The appeal site is located to the north of the Inchicore Road, and to the south of the main Dublin – Limerick railway line and Con Colbert Road. The Irish War Memorial Gardens also lie to the north of Con Colbert Road and Kilmainham Gaol lies to the east of the site. The Inchicore Road operates a one-way traffic system, with a two-way cycle lane on the northern side of the carriageway and parking on the southern side.
- 1.2. This area of Dublin comprises a terrace of two storey homes to the south of Inchicore Road with a mix of residential developments to the north of Inchicore Road, including Spencer Terrace to the east comprising two storey over garden level terraces houses and an apartment development at Kilmainham Square and the Old Chocolate Factory Apartments to the east. Immediately to the east, lies Rosemount Court which comprises 8 apartments in a building which rises to three storeys in height. The Dublin Buddhist Centre is located at 56 Inchicore Road and comprises a semi-detached building.
- 1.3. To the west of the site, lies the residential development of Heuston Square which comprises a mix of two storey and three storey homes. To the south-west, lies the former Kilmainham Congregational Church. This building has been converted into a private residence while retaining the key elements of the building. The subject proposed development site boundary runs tight to the rear elevation of the former church building and formed part of the original gardens of the church grounds.
- 1.4. The subject site has a stated area of 0.108ha (1,080m²) and comprises a two-storey detached house and associated driveway and open space. The house, with a stated floor area of 157.5m², is set back from the public road and the L-shaped site has a roadside boundary width of 12.37m, reducing to approximately 7.6m at its narrowest, before running to the rear of the former church and comprising a plot width of approximately 30m and a depth of 27.5m. The existing entrance to the site has a width of approximately 3.2m and there is an existing mature tree and a streetlamp immediately to the west of the existing entrance.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices to demolish an existing 2 storey detached dwelling and construct a terrace of 5 no. 3 bed 3 storey houses with single storey extensions to the rear on the 2 no. end of terrace houses, together with bin store, bike rack and new entrance wall and railings, including widening of the existing vehicular access/entrance, 6 no. car park spaces, landscaping and all with ancillary site works, all at Kedleston, No. 60, Inchicore Road, Kilmainham, Dublin 8.
- 2.2. The application included a number of supporting documents including as follows:
- Plans, particulars and completed planning application form,
 - Cover letter
 - Part V Exemption Certificate form
 - Schedule of Accommodation & Housing Quality Assessment
 - Design Statement
 - Architectural Heritage Report
 - Engineering Assessment Report – including Flood Risk Assessment
 - Landscape Masterplan, Design Rationale & Specification

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reasons:

1. Having regard for Section 11.1.5.1 CHC2 (b) and (d), and Section 16.2.2.2 of the Dublin City Council Development Plan 2016-2022; it is considered that the design, form, height, siting and materials of the proposed new development are of poor architectural quality and unsympathetic to the character of the Protected Structure, its historic curtilage and its setting. Therefore, the proposal would seriously injure the amenity, legibility and special architectural character of the

protected structure and its historic and architectural setting. Furthermore, the proposed development would result in an unacceptable level of overlooking into the northern elevation of this Protected Structure and would be contrary to Policy CHC2 of the Dublin City Development Plan 2016-2022 and contrary to the proper planning and sustainable development of the area.

2. Policy 16.10.17 of the Dublin City Council Development Plan 2016-2022 provides that "the planning authority will actively seek the retention and re-use of buildings/ structures of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city." The characterful 20th Century house (Kedleston) makes a positive contribution to the special historic and architectural character of the area. The demolition of this fine building would therefore contravene Policy 16.10.17 of the Dublin City Council Development Plan 2016-2022 and the construction of a new 3-storey terrace of 5 houses in its place would seriously injure the amenities of the historic area.
3. The proposed development of five houses on this site, due to the insufficient private amenity space to cater for this development would represent overdevelopment of this site and would seriously injure the residential amenities of the future occupants of the houses and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission, the planning history of the wider site and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening and EIA Screening section.

The Planning Report considers the proposed development under a number of headings and considers that the design of the proposed houses, which would be very visible from Inchicore Road, would detract from the character and setting of the protected structure. In addition, the Planning Officer raises concerns regarding the quality of the residential development, particularly in terms of the provision of private amenity space, concluding that the development represents an overdevelopment of the site. The report also concludes that the PA does not support the demolition of the existing house on the site and agrees with the commentary of An Taisce and the Arts Council as well as the DCC Conservation Officer in this regard. It is also noted that given the removal of the existing trees from the site, the building is highly visible from the public road.

The report determined that the proposed development, due to its insensitive design and height of the proposed houses, the setting and proximity of the houses to a principle elevation of a protected structure, would harm the curtilage of the structure and does not compliment the special character of the protected structure. The report concludes that the development contravenes Policy CHC2 of the CDP and would be contrary to the proper planning and sustainable development of the area.

The Planning Officer recommends that permission be refused for the proposed development, for 3 reasons as detailed above in Section 2 of this report. This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Drainage Division: No objection subject to conditions.

City Archaeologist: The report notes that the site is located within the Zone of Archaeological Constraint for the Recorded Monument DU018-020 (Dublin City) which is listed on the RMP and is subject to statutory protection. The site is located 100m south of the War Memorial Gardens where a Viking Cemetery was discovered in the 19th century and there are a number archaeological artefacts/burials associated with the Viking period recorded by the National Museum of Ireland in the vicinity.

The building for demolition is within the curtilage of a protected structure and is sympathetic in form and design to the church. No consideration is given to the negative visual impact on the protected structure as required by the City Development Plan policy.

An archaeological impact assessment should be prepared to assess the nature of possible archaeological deposits at the site. A measured historic building survey of Kedleston is also required to be submitted as well as a visual impact assessment of the proposed development on the protected structure.

Further information required.

Transportation Planning Division: The report requires that further information be submitted with regard to the following:

1. Adequate sightlines are required to be demonstrated.
2. Omit the proposed dropped kerb and tactile paving and the relocation of the STOP sign.
3. Car parking issues and access issues noted including for fire tenders etc. Swept path analysis required.
4. Cycle store.
5. Refuse storage issues prior to bin collections.

Conservation Officer: The DCC Conservation Officer submitted a comprehensive report relating to the proposed development and its context in terms of the adjacent protected structure. The report considers that an inadequate assessment of the visual impact of the proposed development has been submitted and considers that the development would be incongruous to the established character and setting of the protected structure, seriously injuring the visual and spatial amenity. Issues are also raised in relation to the proposed materials and the proposed demolition of the existing house. The removal of trees from historic curtilages is also not supported from a conservation standpoint and the recent removal of mature trees is disappointing. The proposed landscaping strategy has been led by an

engineering rather than an historical architectural approach and overall raises serious concerns and injury to the setting and special character of the protected structure as well as the historic site itself.

The report recommends that permission for the proposed development be refused for 2 stated reasons.

3.2.3. **Prescribed Bodies**

An Taisce: The body is not satisfied that the demolition of the existing 1930s house is justified, noting that the design and proportions are subordinate to the Protected Structure. It is also noted that it is the policy of DCC to encourage the re-use of buildings and to seek the preservation of the built heritage of the city.

The proposed development would be sited directly to the rear of the PS and straddle the historic plot, fundamentally changing its setting. The submitted 3D views are inadequate.

Issues also raised regarding the extensive removal of soft landscaping to accommodate the development as well as the impacts associated with the increased traffic levels.

It is submitted that the development would be contrary to the proper planning and sustainable development of the area and should be refused.

The Arts Council / An Chomhairle Ealaíon: The report notes that while the proposed development does not include works to a protected structure, the site is located immediately adjacent to the Congregational Church PS. The report notes the provisions of Policy CHC2 of the City Development Plan and submits that the proposed development would appear incongruous to the established character setting and to the visual and spatial relationship between both properties.

The submitted Architectural Impact Statement does not appear to give consideration to the context, or significance of the character setting and relationship between both properties, which should have informed or influenced the scale, form, proportions and cladding finishes of the proposed development.

The additional landscaping proposed appears inconsistent with the landscaping plan.

The Arts Council requests that the DCC satisfy itself that the proposed development is consistent with the provisions of the CDP.

3.2.4. **Third Party Submissions**

There are 40 no. third party objections/submissions, including one with multiple signatories, noted on the planning authority file. The issues raised are summarised as follows:

- Habitable house should be retained. It was not derelict when purchased by the applicant.
- The developer has engaged in a series of actions designed to hasten the dereliction of the property and efforts to cut down the mature tree on Inchicore Road directly outside the entrance to the site was prevented by a resident on the 21st of December 2020.
- Impact of additional traffic on roads.
- Impact on protected structure which originally included the subject site.
- Design issues & impact on existing residential amenity and visual impacts on the protected structure.
- While the landscaping plan suggests that no existing vegetation will be removed or cut, every existing tree, shrub and plant has been razed within the site boundary, impacting biodiversity.
- Applicant has a history of non-compliance with planning matters and has convictions in this regard. The applicant has also deliberately destroyed a perfectly good house which could have accommodated a family.
- This area of Dublin City should be recognised as an area of special interest within the city and protected.
- Persons using the subject site as a car park for adjacent construction works have turned left and driven the wrong way up Inchicore Road as a shortcut endangering the cycle lane and pedestrians. Enforcement notice served to cease using the site as a car park.

- The reports submitted are out of date – eg the Heritage Statement indicates the retention of the trees. By the time the application was made, all the trees had been removed.
- The development does not comply with the requirements of the City Development Plan.
- Impact on the historic streetscape, including the loss of trees and of the existing high boundary wall and its replacement with modern railing.
- The development is within 14m of the boundary of the railway cutting, contrary to the requirements of Iarnrod Eireann Infrastructure.
- The development does not comply with a number of national standards.
- Impacts of the development on existing residential amenity in terms of overshadowing of existing private amenity spaces and living spaces as well as visual impacts associated with overbearing due to the scale of the development.
- No assessment on overshadowing has been presented.
- Issues relating to emergency services access and facilities.
- Site servicing and structural integrity issues raised in terms of installations proposed along boundary walls. It is noted that no site investigation report has been submitted with the application.
- Impact on property valuations and loss of outlook.
- No reference to the site being located within the curtilage of the protected structure in the material submitted.
- The application did not include a tree survey, ecological impact assessment or a bat survey, contrary to the CDP requirements CHC2 sections (d) and (f).
- The development comprises an overdevelopment of the site.
- Residential quality of the homes proposed questioned.
- The development, if permitted will set a detrimental precedent for similar developments encroaching on protected structures.

4.0 Planning History

4.1. Subject site:

There is no recent planning history associated with the subject site other than the issuing of the Social Housing Exemption Certificate associated with the subject application, 0055/21 refers.

4.2. Adjacent site to west: **Kilmainham Congregational Church site:**

PA Reg Ref: 4289/04: Permission sought by Kenny Byrnes for development at Kilmainham Congregational Church Inchicore Road Kilmainham Dublin 8 being a state protected structure to consist of refurbishment of 8 no. existing windows, roof, internal & external plaster, removal of pews and vestibule, alterations to lower sections of 6 no. existing windows, blocking up of internal door alcove, existing granite steps and retaining wall to be removed and relocated, existing grassed area to be altered to include provision of 3 no. car spaces. Removal of existing gates, railings and wall at front with new gate and 2 no. piers, roof of existing storage shed to be modified. Conversion of existing single space to 3 no 2 bed apartments on 2 storeys & associated work to include damp proofing system and 7 no. new rooflights, all at Kilmainham Congregational Church, Inchicore Road, Kilmainham, Dublin 8

Dublin City Council refused permission on 13 Oct 2004 for the following stated reasons:

1. The proposal, by virtue of the subdivision of this former church building to create three dwellings and by the insertion of a new floor to create an additional storey, would compromise the character and integrity of this protected structure in a manner which would be difficult to reverse. The proposal would therefore be contrary to the provisions of the Dublin City Development Plan and to proper planning and development.
2. The proposal, by virtue of the creation of habitable rooms lit by existing windows in the north elevation, whose previous use was predominantly high-level lighting, would result in overlooking of the adjoining dwelling on whose boundary the windows are located. The proposal would

therefore be seriously injurious to the residential amenities of the area and to proper planning and development.

3. The proposal, by virtue of the creation of a vehicular access in the front boundary wall and a car parking area in the front garden, would detract from the streetscape and compromise the character of this protected structure and would, in addition, be contrary to the provisions of the Dublin City Development Plan in relation to vehicular access, specifically Policy 14.2.3. The proposal would therefore be seriously injurious to the visual amenities of the area and to proper planning and development.

PA Reg Ref: 4179/05: Planning permission granted to develop the Kilmainham Congregational Church (a protected structure) Inchicore Road, Kilmainham, Dublin 8, for the carrying out of restoration works to the interior and exterior of this building, including its curtilage and boundary, demolishing the chemical toilet and shed (to the east of the building), removing the pews, repairing and improving the roof and gutters of the premises, constructing new roof atop internal freestanding enclosure, repairing existing windows, improving existing drainage system including a new trench, re-pointing existing granite steps and boundary walls, re-pointing brick piers, cleaning and painting of railings, gates and lamp post, reinstating gravel walkway and extended gravel path along base of south wall of building, renewing existing "Kilmainham Congregational Church" sign and change of use of resulting building from a place of public worship to a professional office within the meaning of Class 3 of Part 4 to the Second Schedule of Planning and Development Regulations, 2001. Final grant issued 29 Mar 2006

PA Reg Ref: 2346/08: Permission granted to Maeve Higgins for a development which will consist of - Proposed works comprising change of use from Religious use / Place of Worship to residential use. Works will consist of the internal refurbishment and alteration, to include the construction of a raised suspended timber floor living room and the construction of a 2 storey section with 2 bedrooms at first floor level, all within the existing structure. Externally existing brick out-house to be replaced with a new timber frame store. Related landscaping works to be carried out.

5.0 Policy and Context

5.1. National Planning Framework – Project Ireland 2040, DoHP&LG 2018

The NPF includes a Chapter, No. 6 entitled ‘People, Homes and Communities’. It sets out that place is intrinsic to achieving good quality of life. A number of key policy objectives are noted as follows:

- National Policy Objective 33 seeks to “prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”.
- National Policy Objective 35 seeks “to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

National Planning Objective 13 provides that “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”.

5.2. Sustainable Residential Development in Urban areas, Guidelines (DoEHLG, 2009):

5.2.1. These statutory guidelines update and revise the 1999 Guidelines for Planning Authorities on Residential. The objective is to produce high quality – and crucially – sustainable developments:

- quality homes and neighbourhoods,
- places where people actually want to live, to work and to raise families, and
- places that work – and will continue to work - and not just for us, but for our children and for our children’s children.

5.2.2. The guidelines promote the principle of higher densities in urban areas as indicated in the preceding guidelines and it remains Government policy to promote sustainable patterns of urban settlement, particularly higher residential densities in locations which are, or will be, served by public transport under the *Transport 21* programme.

5.2.3. Section 5.6 of the guidelines suggest that there should be no upper limit on the number dwellings permitted that may be provided within any town or city centre site, subject to the following safeguards:

- compliance with the policies and standards of public and private open space adopted by development plans;
- avoidance of undue adverse impact on the amenities of existing or future adjoining neighbours;
- good internal space standards of development;
- conformity with any vision of the urban form of the town or city as expressed in development plans, particularly in relation to height or massing;
- recognition of the desirability of preserving protected buildings and their settings and of preserving or enhancing the character or appearance of an Architectural Conservation Area; and
- compliance with plot ratio and site coverage standards adopted in development plans.

5.2.4. Section 5.7 deals with Brownfield lands and notes that where significant sites exist and, in particular, are close to existing or future public transport corridors, the opportunity for their re-development to higher densities, subject to the safeguards expressed above or in accordance with local area plans, should be promoted, as should the potential for car-free developments at these locations.

5.3. Architectural Heritage Protection Guidelines for Planning Authorities (Department of Arts, Heritage and the Gaeltacht 2011).

The subject site includes a protected structure, ref 4864 and is located within a residential conservation area. As such, the '*Architectural Heritage Protection, Guidelines for Planning Authorities*' are considered relevant. These guidelines are issued under Section 28 and Section 52 of the Planning and Development Act 2000.

Under Section 52 (1), the Minister is obliged to issue guidelines to planning authorities concerning development objectives:

- a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and
- b) for preserving the character of architectural conservation areas.

The guidelines provide guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures. The guidelines seek to encourage the sympathetic maintenance, adaption and re-use of buildings of architectural heritage.

Chapter 13 deals with Curtilage and Attendant Grounds and Section 13.5 relates to Development within the Curtilage of a Protected Structure and Section 13.8 of the Guidelines relate to Other Development Affecting the Setting of a Protected Structure or an Architectural Conservation area and the following sections are relevant:

- Section 13.8.1
- Section 13.8.2
- Section 13.8.3

5.4. Development Plan

- 5.4.1. The Dublin City Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. The site has the land use zoning objective Z1: Sustainable Residential Neighbourhoods where it is the stated objective of Z1:

To protect, provide and improve residential amenities.

- 5.4.2. Chapter 5 of the Plan deals with Quality Housing and the following policies are considered relevant:

- QH21: To ensure that new houses provide for the needs of family accommodation with a satisfactory level of residential amenity, in accordance with the standards for residential accommodation.

- QH22: To ensure that new housing development close to existing houses has regard to the character and scale of the existing houses unless there are strong design reasons for doing otherwise.

5.4.3. Chapter 11 of the City Development Plan deals with Built Heritage and Culture. The following policies are considered relevant in this instance:

- **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.
- **CHC2:** To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:
 - (a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest
 - (b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances
 - (c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials
 - (d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure
 - (e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works
 - (f) Have regard to ecological considerations for example, protection of species such as bats.

Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.

5.4.4. Chapter 16 of the CDP deals with Development Standards and section 16.10.2 deals with Residential Quality Standards for houses. This section deals with floor areas, aspect, natural light and ventilation, private open space and separation distances. Section 16.10.10 deals with Infill development and provides that the council will allow for the development of infill housing on appropriate sites.

5.4.5. In general, infill housing should comply with all relevant development plan standards for residential development; however, in certain limited circumstances, the planning authority may relax the normal planning standards in the interest of ensuring that vacant, derelict and under-utilised land in the inner and outer city is developed.

5.4.6. Infill housing should:

- Have regard to the existing character of the street by paying attention to the established building line, proportion, heights, parapet levels and materials of surrounding buildings
- Comply with the appropriate minimum habitable room sizes
- Have a safe means of access to and egress from the site which does not result in the creation of a traffic hazard.

5.4.7. Section 16.10.17 deals with Retention and Re-Use of Older Buildings of Significance which are not Protected where it is stated that

The re-use of older buildings of significance is a central element in the conservation of the built heritage of the city and important to the achievement of sustainability. In assessing applications to demolish older buildings which are not protected, the planning authority will actively seek the retention and re-use of buildings/structures of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city.

Where the planning authority accepts the principle of demolition a detailed written and photographic inventory of the building shall be required for record purposes.

5.5. Natural Heritage Designations

- 5.5.1. The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay SAC (& pNHA)(site code 00210) and the South Dublin Bay and River Tolka Estuary SPA (site code 004024) which are located approx. 5.8km to the east of the site. The North Dublin Bay SAC (& pNHA)(Site Code 000206), and North Bull Island SPA (Site Code 004006) lies approximately 9km to the east.

5.6. EIA Screening

- 5.6.1. The proposed development is not of a class which requires mandatory EIA. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units
- Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.

(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

- 5.6.2. The proposed development comprises a development of 5 residential units in the form of a terrace of 3 storey, 3 bed houses. The development also includes the demolition of an existing detached house on the site. The site, with a stated area of 1,080m², is located in a built-up area which can be described as ‘other parts of a built-up area’ rather than a business district. In any case, the site is below the threshold of 2 ha for a ‘business district’ location, and substantially below the 10ha threshold for ‘other parts of a built-up area’. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

- 5.6.1. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a

significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.6.2. Having regard to:

- (a) the nature and scale of the development,
- (b) the built nature of the site,
- (c) the zoning afforded to the site and the availability of public services and infrastructure,
- (d) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

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

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The appeal submission is summarised as follows:

- The development is in line with national policy and is appropriately zoned.
- Planning permission has been granted for similar infill/side garden sites in the area.
- The proposed houses comply with all regulatory guidelines and regulations and have been carefully designed to be a cohesive and sympathetic addition to the streetscape.

- The juxtaposition of new and modern buildings against Protected Structures is well established in the area.
- Any relationship between Kedleston and the Congregational Church is purely historical and no longer relevant. The curtilage was not included when the Church was designated as a protected structure in 2013.
- The rear boundary of the church is the outer face of the external wall. The proposed houses have been designed so as not to have habitable rooms facing this elevation bar at ground floor level. The development allows for the retention of the hedge and planted strip – which belongs to the applicant and there is an existing roadway extending behind the church.
- No materials of any archaeological significance were discovered on the site of the PS when it was surveyed. The applicant has no objection to an archaeological condition being included.
- Consultants engaged with Iarnrod Eireann as part of the design process.
- Private amenity space proposed is in line with the requirements of Section 16.10.2 of the Dublin City Development Plan where 5-8m² of private open space per bedspace is permitted in the inner city.
- Roads and traffic issues are addressed in a report from 2HQ Consulting Engineers.

6.1.2. The appeal concludes requesting that the Board overturn the decision of Dublin City Council and grant permission for the development.

6.1.3. There are a number of enclosures with the appeal as follows:

- Photograph of existing hedge and road to the rear of the Congregational Church.
- Report from 2HQ Consulting Engineers – addressing matters raised by the Traffic and Transportation department of Dublin City Council.

6.2. **Planning Authority Response**

None.

6.3. Observations

There are 15 observers noted on the appeal file as follows:

- | | |
|--|---|
| 1. Inchicore Road Residents | 9. Kathleen James-Chakraborty |
| 2. Cllr Maire Devine & Others | |
| 3. Karol O'Mahony Architects | 10. Jennifer Cooper & Oliver Durrant |
| 4. Dr. Ian Miller & Dr. Annette Clancy | 11. Rosemount Management Committee |
| 5. Laura Monaghan & Wayne Rothwell | 12. OC+C Architects |
| 6. The New Kilmainham Historical Society | 13. Irish Georgian Society |
| 7. Dr. Conor Lucey | 14. An Taisce |
| 8. Ross Hamer | 15. DAU - Dept. of Tourism, Culture, Arts, Gaeltacht, Sport and Media |

6.3.1. The issues raised in the observations reflect those made to the Planning Authority during its assessment of the proposed development and are summarised as follows;

- Demolition of habitable homes is not government policy.
- There is no precedent set by the development as suggested as the development at no. 54 Inchicore Road did not require the demolition of a habitable home and did not include development within the former gardens of a protected structure.
- Impact of the proposed development on the Kilmainham Congregational Church, Protected Structure.
- Scale, design & height is overbearing in the context of the Protected Structure
- The curtilage of the PS remains in place irrespective of ownership
- The suggested precedents referred to by the first party are not relevant to the context of the subject site.
- Impact on existing residential amenity in terms of privacy and overlooking

- Impact on sunlight and daylight
- Built heritage
- House type and quality.
- The development shows insensitivity and lack of understanding for historical settings and neighbourhood. The relationship between the church and Kedleston is not trivial as suggested and it is submitted that as no benefit accrued to the Church the leasing of the land to build Kedleston was not a sale.
- Loss of the mature garden and mature trees prior to application.
- Lack of evidence that Iarnrod Eireann Infrastructure have revised their specific requirements that all new construction must be 14m from the site boundary with the railway cutting.
- Kedleston was habitable less than 12 months ago, before it was sold and vandalised by the developer to promote the vacant derelict site.
- Roads and traffic issues remain unanswered. Emergency access has not been adequately addressed.
- Previous conduct of the developer raised as an issue due to previous convictions.
- The treating of the site as an 'inner city site' is inappropriate.
- Issues with the site layout in terms of roads and traffic and bin storage for collection.
- The 'roadway' referred to in the appeal to the rear of the church building is a worn-out path to a long-gone shed.
- The submitted appeal does not address the reasons for refusal.
- The proposal to reduce the site levels across the site are a concern and will have serious negative impacts on the boundary walls, mature trees and the existing Rosemount Court building itself.
- Issues also raised with regard to the relocation of the entrance and the reductions in levels required.

- 6.3.2. In addition to the above comments, the Board will note that the DAU also submitted an observation with regard to the proposed development. The Department agrees with the Planning Authority, that the demolition of the house on the site would contravene the Dublin City Development Plan and is contrary to the proper planning and sustainable development of the area. The report further notes that substantial clearance of the historic setting / mature planting shared between the site and the Protected Structure has been carried out. While there is evidence of deterioration of Kedleston in general, significant features remain and heritage led regeneration promotes the reuse and adaption of existing structures, inline with government policy.
- 6.3.3. The proposed development and the assessment of the historical evolution of the site highlights the significantly negative impact that the development will have by virtue of its position, scale, materiality and its encroachment on the former church and its amenity. This impact is considered to be profound and irreparable on the historic church setting due to the close proximity, monolithic nature and dominance of the new building. The landscaping plan affords minimal mitigation and the removal of the mature setting, the intensification of use and the accumulation of hard landscaping, parking, lighting, bins access etc, are considered to directly impact on the surviving significance of the former church and are likely to undermine its survival. The report recommends that the development be re-evaluated and integration of the built heritage of the site is recommended.

7.0 Planning Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Impact on Built Heritage
3. Residential Amenity
4. Roads & Traffic
5. Other Issues
6. Appropriate Assessment

7.1. Principle of the development

- 7.1.1. The proposed development seeks to demolish the existing two storey 1930s detached house, Kedleston, on the site and to construct a terrace of 5 no. 3 bed 3 storey houses with single storey extensions to the rear on the 2 no. end of terrace houses, together with bin store, bike rack and new entrance wall and railings, including widening of the existing vehicular access/entrance, 6 no. car park spaces, landscaping and all with ancillary site works, all at Kedleston, No. 60, Inchicore Road, Kilmainham, Dublin 8. The proposed development will extend to the rear of the Kilmainham Congregational Church, Protected Structure, and will be accessed via a widened entrance onto Inchicore Road. Inchicore Road operates as a one-way street for vehicles in an east west direction from Royal Hospital Kilmainham and Kilmainham Gaol to the east, towards the junction with Con Colbert Road to the west, with a two-way cycle lane on the northern side of the carriageway and parking on the southern side.
- 7.1.2. The subject site has a stated area of 0.108ha (1,080m²) and comprises a two-storey detached house and associated driveway and open space. The house, with a stated

floor area of 157.5m², is set back from the public road and the L-shaped site has a roadside boundary width of 12.37m, reducing to approximately 7.6m at its narrowest, before running to the rear of the former church which fronts onto Inchicore Road, and comprising a plot width of approximately 30m and a depth of 27.5m. The existing entrance to the site has a width of approximately 3.2m and there is an existing mature tree and a streetlamp immediately to the west of the existing entrance on the public pavement. The subject site forms part of the original wider curtilage of the former Kilmainham Congregational Church, Protected Structure. This building has been converted into a private residence while retaining the key elements of the building. The subject proposed development site boundary runs tight to the rear elevation of the former church building.

7.1.3. In terms of the principle of the proposed development, the subject site is located on lands zoned Z1 in the Dublin City Development Plan and where it is the stated objective of the Z1 zoning to protect, provide and improve residential amenities. In this regard, the proposed residential use is permissible in principle on such zoned lands. While I acknowledge the concerns of the Planning Authority in terms of the reasons for refusal cited for the development, having regard to the location of the subject site on serviced and zoned lands, together with the proximity to public transport, retail, community and social facilities, it is reasonable to conclude that in principle, the development of the site for residential purposes is acceptable.

7.1.4. The Board will note that the applicant has sought to suggest that the site is located within inner city and is a vacant and under-utilised site. While I would not agree with this assessment, I would accept that the principle of a higher density residential development can be considered acceptable and in accordance with the general thrust of national policy. The subject site has a stated area of 0.108ha and proposes to provide 5 residential units on the site. In terms of the Dublin City Development Plan requirements, the following is relevant:

	Proposed	Development Plan
Site Coverage	27.9%	45%-60%
Plot Ratio	0.6	0.5-2.0
Density	46.3 units / ph	50 units / ph

Public Open Space	50m ² This is provided in a narrow strip to the rear of the existing former Church PS.	108m ² (10% of site)
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7.1.5. The Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities suggest that there should be no upper limit to density on City Centre sites subject to qualitative safeguards. In areas close to public transport corridors minimum densities of 50 units per hectare should be applied subject to those safeguards. In terms of compliance with the Dublin City Development Plan, the proposed development is acceptable in principle with regard to the recommendations of the Plan in terms of site coverage, plot ratio and density.

7.2. Impact on Built Heritage

7.2.1. The subject site, and proposed development, must be considered in the context of the important Protected Structure which is located to the southwest of the building to be demolished and located within the curtilage of the PS. Kedleston is a two storey three bay, hipped roofed house which was constructed in the 1930s on land which originally comprised the gardens associated with the Kilmainham Congregational Church. The house was constructed within the curtilage of the Church and was occupied by the caretaker of the church and grounds following the leasing of the grounds for a period of 950 years in 1917.

7.2.2. The Board will note the submissions of the DAU and An Taisce as well as the Dublin City Council Conservation Officer with regard to the proposals to demolish Kedleston. I also note the third-party submissions in this regard. While the applicant seeks the demolition of the house to increase the density of residential use of the site, there is little or no assessment with regard to the house in the context of the Protected Structure and as a building of significance in itself. I also note that substantial clearance of the site has been undertaken at the site, including the removal of mature trees and landscaping, which has had a significant and negative impact on the property, as well as the curtilage of the protected structure and the building itself. The Board will also note the concerns raised by third parties with regard to impacts on bats due to the removal of mature trees. There is no commentary either way on this issue by the applicant.

7.2.3. It must be accepted that Kedleston was habitable less than a year ago given the evidence submitted, and I note the rapid deterioration of the house in the interim. That said, I do not consider that the deterioration is so substantial as to be irreversible with appropriate and urgent measures. The roof and all of the windows to the rear of the property appear to be intact, although it is evident that a number of architectural features have been removed, including stained glass panels. On the date of my inspection, the site was indeed, being used as a car park for workers at another building site to the east of the subject site – the Board will note the issue of unauthorised development as raised by third parties in this regard.

7.2.4. In terms of the proposed demolition, I note the requirements of the DCCDP Section 16.10.17 which deals with Retention and Re-Use of Older Buildings of Significance which are not Protected and where it is stated that:

The re-use of older buildings of significance is a central element in the conservation of the built heritage of the city and important to the achievement of sustainability. In assessing applications to demolish older buildings which are not protected, the planning authority will actively seek the retention and re-use of buildings/structures of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city.

Where the planning authority accepts the principle of demolition a detailed written and photographic inventory of the building shall be required for record purposes.

It is accepted that the existing house on the site makes a positive contribution to the character and identity of the streetscape in which it lies, and in particular, contributes to the special historic and architectural character of the adjacent protected structure and its curtilage. The demolition of this building in my opinion, therefore, is not supported by the City Development Plan.

7.2.5. With regard to the design and layout of the proposed development, the proposed 5 no. 3 storey terrace of houses will be set back approximately 9.4m from the rear wall, and boundary, of the protected structure, and will lie within the curtilage of the protected structure. While I note the submission of the appellant in terms of the curtilage of the protected structure, the Board will note the content of Chapter 13 of

the DoAHG 2011 Architectural Heritage Protection Guidelines for Planning Authorities, which specifically deals with Curtilage and Attendant Grounds. The Guidelines note at Section 2.6.5 that 'it is possible that part of the curtilage or a specified feature within the attendant grounds of the structure may not in fact be in the ownership or control of the notified party.' Section 3.3.2 states 'Many buildings were consciously designed to contribute visually to the character of their setting, beyond the boundaries of the curtilage on which they were built. They respond to the street, road or landscape in which they are situated.'

7.2.6. By definition, a protected structure includes the land lying within the curtilage of the protected structure and other structures within that curtilage and their interiors. The notion of curtilage is not defined by legislation, but for the purposes of the guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure. Section 13.1.5 of the guidelines sets out the considerations with regard to making a decision as to the extent of the curtilage of a protected structure and that the planning authority should consider:

- a) Is, or was, there a functional connection between the structures? For example, was the structure within the curtilage constructed to service the main building, such as a coach-house, stores and the like?
- b) Was there a historical relationship between the main structure and the structure(s) within the curtilage which may no longer be obvious? In many cases, the planning authority will need to consult historic maps and other documents to ascertain this;
- c) Are the structures in the same ownership? Were they previously in the same ownership, for example, at the time of construction of one or other of the structures?

7.2.7. In the context of the subject site, I am satisfied that the proposed development site can be appropriately determined to be within the curtilage of the protected structure, Kilmainham Congregational Church, NIAH Ref: 50080043. The Guidelines require that proposals for new development within the curtilage of a protected structure should be carefully scrutinised as inappropriate development will be detrimental to the character of the structure. New construction which interrupts a formal relationship

between a protected structure and its ancillary buildings or features should rarely be permitted.

- 7.2.8. The proposed development provides for a terrace of 5 houses rising to 3 storeys in height and the modern design has sought to minimise windows at upper floor levels in an effort to reduce the potential impact of the development on the adjacent residential properties with regard to overlooking. The overall height of the flat roofed terrace is indicated at 8.9m to the roof top, but the design includes a pop-up window which increases the overall height of the structure to 9.9m in height.
- 7.2.9. In terms of the proposed materials to be employed, the modern development proposes that the roof will comprise a selected single membrane roof covering with the walls will be finished in a proprietary self-coloured render / sand cement, selected brick or rheinzink cladding. The windows will be uPVC or aluminium with stone or concrete cills. In terms of the design, I note that the first-floor windows on the front elevation will be high level and will service the bathrooms.
- 7.2.10. The protected structure comprises a detached three-bay single-storey former Congregational chapel, built c.1800, now in use as house. The building has retained its early form and has been sensitively renovated as a house and was awarded second place in the Irish Georgian Society Conservation Awards, 2010. This building rises to a height of 7.97m.
- 7.2.11. The new houses will be set back approx. 9.4m from the rear wall of the church and having regard to the proposed layout of the site, will result in significant overlooking of the interior of the existing converted church building. The proposed building will also rise substantially above the protected structure and will significantly impact on the historic curtilage, setting, legibility and special architectural character of the Kilmainham Congregational Church, NIAH Ref: 50080043. In addition, and notwithstanding the fact that the house has been allowed to fall into some disrepair in recent months, I am not satisfied that the appellant has submitted sufficient evidence to warrant the demolition of Kedleston, which I consider contributes to the setting and character of the protected structure, as well as the wider streetscape.

7.3. Residential Amenity

- 7.3.1. The proposed houses include areas of private amenity space to the rear with areas ranging from 40m² to 43.5m². The Dublin City Development Plan requires that 10m² per bed space is provided. The Board will note that each house rises to three storeys in height and proposes 3 bedrooms, 2 single and 1 double, as well as a 7m² study at second floor level. It is submitted by a number of the third parties that the houses could reasonably be considered 4 bedrooled units which could accommodate up to 6 people. In this regard, the Planning Authority considered, Reason for Refusal no. 3 refers, that the proposed development would represent an overdevelopment of the site due to the insufficient private amenity space proposed and would seriously injure the residential amenities of future occupants.
- 7.3.2. In the context of the overall proposal, together with the lack of any usable public or communal open space to service the proposed development, I am inclined to agree with the Planning Authority in this regard. I would further suggest that the site is not located within an inner-city location whereby the potential for the relaxation of the private amenity space provision could reasonably be applied, as suggested by the applicant.
- 7.3.3. While the subject proposal does not include a development which could be considered excessive in height, the issue of height was raised by third parties in the context of impact on adjacent residential amenities as well as the impact on the character and setting of the protected structure. I have addressed my concerns in terms of the impact of the proposed development on the character and setting of the protected structure above, and the Board will note that the proposed houses will be set back approx. 9.4m from the rear wall of the church, which includes three windows serving all residential spaces and a bedroom within the converted church. The development, if permitted, will result in significant overlooking of the interior of the existing converted church building.
- 7.3.4. While I have no objections in principle to the overall design of the proposed terrace of houses, or indeed the proposed height in principle, I have concerns in terms of the overall height and scale in the context of the sites' location within the curtilage of the protected structure. In addition, and notwithstanding the landscaping plans submitted in support of the proposed development, the Board will note that there has already

been substantial removal of existing mature trees and vegetation from the site, prior to the submission of the application, without any commentary or clarification by the applicant. Given the context of the site within the curtilage of a protected structure, together with the policy requirements of the Dublin City Development Plan, 11.1.5.3 refers, any mitigation the former landscaping of the site could have provided for the impacts associated with proposed development has been lost, and the historic context of the site has been damaged.

- 7.3.5. While I acknowledge the submission of the first party, I consider that the proposed development would represent an inappropriate form of development which would significantly impact existing residential, visual and general amenities of the wider area, would be overbearing on existing residential development to the west and south, and would not be appropriate to the character of the streetscape or curtilage of the protected structure.

Overlooking

- 7.3.6. Having regard to the layout of the proposed development, the houses will be located to the rear of the converted church and will be within 9.4m of the rear windows of the home. While I accept that the design of the proposed development has sought to minimise first floor windows on its southern elevation to minimise overlooking, having regard to the layout of the existing converted church, together with the proposed location of the pedestrian access and landscaping plans, I consider that the development has the potential to significantly impact on the existing residential amenities of the existing home by reason of overlooking directly into the house. While I accept that reduced distances might be appropriately considered in terms of higher density schemes or compact infill sites, I do not accept that any innovative design solutions have been put forward by the applicant to allay these concerns here.

Overbearance

- 7.3.7. The Board will note the proposed layout of the development will result in the 'gable' ends of the terrace being located within between 1.2m and 1.4m of the western and eastern boundaries. The houses to the west back onto the site while there is an apartment development to the east. With regard to the houses on the west, the development will impact Nos. 13 and 14 Heuston Square, the Board will note that these houses front to the west so that the proposed building will be located

approximately 1.2m from the rear boundary of the houses. In this regard, the existing residents have raised concerns with regard to the potential for the proposed development to be overbearing from their private amenity space. Certainly, the proposed development will be highly visible from the private areas of adjacent houses to the west and will change the outlook from these homes.

7.3.8. The third parties have indicated that the garden levels of the adjacent properties are lower than the subject site, as is the overall height of the existing houses. While I would note that permitted development in the wider area has resulted in three storey buildings being introduced to the area, I would advise that the context of these other sites as referenced by the first party, do not relate to the subject site. Overall, I consider that the introduction of the terrace of three storey houses on this restricted infill site, adjacent to existing two storey homes and the protected structure, will, in my opinion, be visually overbearing and obtrusive when viewed from the adjacent properties to the south and west.

7.3.9. In terms of the three-storey apartment building to the east of the subject site, I am generally satisfied that the layout of the proposed development is unlikely to give rise to any significant concerns of overbearing or overlooking as there are no gable windows on the existing building and the proposed building does not extend beyond the rear wall of the existing building.

Daylight/Sunlight/Overshadowing

7.3.10. The Board will note that the applicant did not submit any assessment of daylight, sunlight or overshadowing for the proposed development. In this context, I have no measured details to work from in this assessment as to the potential impact the development will have on adjacent properties. I note that third parties have raised concerns in this regard. The Board will note that a number of third parties have raised concerns in terms of the potential for overshadowing of their private amenity space, while the owner of the protected structure to the south has also raised concerns in relation to the impact of light on the northern elevation of the converted church.

Having regard to the orientation of the subject site, together with the proposed proximity of the building to the site boundaries, I cannot conclude that the potential loss of sunlight to amenity spaces and overshadowing, as well as the impact of loss

of light within existing homes due to the development, will not be significant. Should the Board be minded to grant permission in this instance, the applicant should be requested to submit a full Daylight/Sunlight/Overshadowing assessment by way of further information.

7.4. Roads & Traffic

- 7.4.1. The Board will note that the Inchicore Road operates a one-way system, with cars travelling in an east to west direction. To the north of the road, and adjacent to the subject site, there is a two-way cycle lane while parking is provided to the south of the carriageway. The Board will note that a number of third parties have raised concerns in relation to roads and traffic issues including as they relate to the use of the entrance for increased numbers of vehicles that will have to cross the cycle lane and footpath, the restricted sight distances to the west due to the presence of a tree on the public footpath and inadequate on-street car parking for visitors.
- 7.4.2. With regard to the access to the site, the Board will note that it is intended to increase the width of the existing entrance to the site to accommodate both vehicular access and pedestrians / cyclists. The existing entrance is approximately 3.2m in width while the proposal will see this increased to 5m in the event of a grant of planning permission. It is noted that the existing tree, located on the public footpath adjacent to the entrance is to be retained and the first-party notes that it is not relevant to sightlines as the Inchicore Road only carries westbound traffic. While this is the case, I would note the concerns of DCC in relation to two-way cycle lane located along the northern edge of the carriageway.
- 7.4.3. Section 16.10.10 of the Dublin City Development Plan requires that development should 'have a safe means of access to and egress from the site which does not result in the creation of a traffic hazard'. I would also note the indication that existing demand for parking in the area is high, and I would suggest that there is limited scope to accommodate parking overspill from the site. Having regard to the number of houses proposed, together with the proximity of public transport modes, I am generally satisfied that the principle of the proposed development can be considered acceptable and that the existing road network, subject to addressing the matters raised by the Dublin City Council Transportation Planning Division are addressed, can accommodate the development without causing undue obstruction to vulnerable

road users in the area. I would acknowledge the construction impacts on the area, should permission be granted for the proposed development, but would note that they are temporary. I would also note that there are some concerns arising with regard to actual manoeuvrability of vehicles within the site due to the restricted nature of the site. I will discuss this issue further below.

- 7.4.4. In terms of the provision of car parking, the Board will note that the submitted site layout plan provides for the provision of 6 spaces within the boundaries of the site. The subject site is located within Parking Zone 2, Map J of the City Development Plan. The maximum standard applicable in this area therefore is 1 space per residential unit. In this regard, the maximum parking provision is 5 parking spaces. The Engineering Assessment Report submitted with the application indicates that the 6th space is provided as a visitors parking space to serve the development. No details of the location of an EV charging point have been noted on the plans. I note the requirements of the Transportation Planning Division of DCC in this regard and would agree that in the event of a grant of planning permission, a condition should be included requiring that such provision is made.
- 7.4.5. The Board will also note that there is a concern in terms of the size of the proposed parking spaces, particularly in terms of spaces nos 5 and 6, which are below the recommended minimum width as detailed in Section 16.38.9 of the Dublin City Council Development Plan which provides details of the Design Criteria for parking spaces. The DCCDP states that 'in no instance shall a width of less than 2.4m be accepted...'. There are therefore concerns arising in this regard. Access to the parking spaces is also raised as a concern as the swept path analysis drawings are not considered to be conclusive, as they show that in order to carry out a U-turn within the site, a private car will have to traverse grass verges and / or kerbs in order to complete the manoeuvre.
- 7.4.6. In terms of movement within the site, I note that the Engineering Assessment Report indicates that refuse collection will take place from the Inchicore Road and as such, it is not proposed to accommodate a refuse vehicle within the site. Concerns have been raised by the Transportation Planning Division of DCC with regard to the accessibility of the site in terms of servicing and emergency service vehicles. In this regard, the applicant has indicated that in the case of an emergency, a fire truck for example, will drive directly into the site to address the emergency. On completion of

their work, it is submitted that they will reverse out of the site onto Inchicore Road and continue west. Should the Board be minded to grant permission in this instance, the applicant should be required to submit clear details for the temporary storage of bins prior to collection on site rather than on the public footpath as well as updated swept path analysis indicating an emergency service vehicle and delivery van entering and leaving the site.

- 7.4.7. In terms of the proposed bike parking, the application includes details to provide a bicycle parking bay for 6 bikes to the west of the internal access road, to the north of proposed parking space no. 4. The Board will also note that the applicant has indicated that the rear gardens of each house will provide space to store bicycles. Given the terraced nature of the proposed development, the three central units will not have an outside access to the rear amenity space. As such, the Transportation Planning Division of DCC has requested that the bike storage capacity for the site be increased to 2 spaces per unit. I consider that this matter should be addressed in the event of a grant of planning permission.

7.5. **Other Issues**

7.5.1. **Water Services**

The Board will note that there was no objection to the proposed development from the Drainage Division of Dublin City Council. The site is located within an area which is served by public water services and there is no history of flooding in this area.

7.5.2. **Part V**

The proposed development application included details relating to the granting of a Part V Exemption Certificate.

7.5.3. **Development Contribution**

The subject development is liable to pay development contribution under Section 48 of the Planning and Development Act 2000, as amended. A condition to this effect should be included in any grant of planning permission.

7.5.4. **Other**

The Board will note the submission of third parties with regard to the previous behaviour of the applicant with regard to unauthorised works. In addition, I note the use of the subject site as an unauthorised car park for the applicants' employees, associated with another development site to the east of the site. I would note that issues of enforcement are a matter for Dublin City Council.

8.0 **Appropriate Assessment**

8.1. **Introduction**

- 8.1.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.
- 8.1.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. The applicant did not submit a Natura Impact Statement with the application but did include an Ecological Impact Statement.
- 8.1.3. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.
- 8.1.4. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:
- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).

- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

Consultations

- 8.1.5. With regard to consultations, the Board will note that a number of third-party observers raise concerns in terms of the impact of the development on the ecology of the site particularly relating to the fact that the applicant razed the site of mature trees and vegetation prior to the submission of the application with potential impacts on bats.

8.2. Screening for Appropriate Assessment

- 8.2.1. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject application. The closest Natura 2000 site is the South Dublin Bay SAC (& pNHA)(site code 00210) and the South Dublin Bay and River Tolka Estuary SPA (site code 004024) which are located approx. 5.8km to the east of the site. The North Dublin Bay SAC (& pNHA)(Site Code 000206), and North Bull Island SPA (Site Code 004006) lies approximately 9km to the east.

- 8.2.2. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. There are 19 Natura 2000 Sites occurring within a 15km radius of the site. I am satisfied that following sites can be screened out in the first instance, as they are located outside the zone of significant impact influence because the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, I conclude that no significant impacts on the following sites is reasonably foreseeable. I am satisfied that the potential for impacts on the following 15 Natura 2000 sites can be excluded at the preliminary stage:

Site Name	Site Code	Assessment
Baldoyle Bay SAC	000199	
Baldoyle Bay SPA	004016	

Howth Head SAC	000202	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p>Screened Out</p>
Howth Head Coast SPA	004113	
Rockabill to Dalkey Island SAC	003000	
Dalkey Island SPA	004172	
Irelands Eye SAC	002193	
Irelands Eye SPA	004117	
Glenasmole Valley SAC	001209	
Knocksink Wood SAC	000725	
Ballyman Glen SAC	000713	
Wicklow Mountains SAC	002122	
Wicklow Mountains SPA	004040	
Malahide Estuary SAC	000205	
Malahide Estuary SPA	004025	

8.2.3. I consider that the following Natura 2000 sites, located within 15km of the subject site, can be identified as being within the zone of influence of the project, for the purposes of AA Screening, as follows:

- South Dublin Bay SAC (000210)
- South Dublin Bay and River Tolka Estuary SPA (004024)
- North Dublin Bay SAC (Site Code: 000206)
- North Bull Island SPA (004006)

8.3. Qualifying Interests for Natura 2000 Sites within Zone of Influence

8.3.1. The subject development site is an urban/suburban site with low density development and is not located within any designated site. The site does not contain any of the intertidal habitats or species associated with any Natura 2000 site. The existing site is composed an existing house which is to be demolished to accommodate a terrace of 5 houses, and its associated gardens and driveway. I

note that the mature trees and planting which previously existed on the site have been removed in recent times.

8.3.2. The following table sets out the qualifying interests for each of these sites:

European Site	Qualifying Interests
<p>South Dublin Bay SAC (Site Code: 000210)</p> <p>Located approx. 5.8km to the east of the site</p>	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140]
<p>South Dublin Bay & River Tolka Estuary SPA (Site Code: 004024)</p> <p>Located approx. 5.8km to the east of the site.</p>	<ul style="list-style-type: none"> • Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] • Oystercatcher (<i>Haematopus ostralegus</i>) [A130] • Ringed Plover (<i>Charadrius hiaticula</i>) [A137] • Grey Plover (<i>Pluvialis squatarola</i>) [A141] • Knot (<i>Calidris canutus</i>) [A143] • Sanderling (<i>Calidris alba</i>) [A144] • Dunlin (<i>Calidris alpina</i>) [A149] • Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] • Redshank (<i>Tringa totanus</i>) [A162] • Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] • Roseate Tern (<i>Sterna dougallii</i>) [A192] • Common Tern (<i>Sterna hirundo</i>) [A193] • Arctic Tern (<i>Sterna paradisaea</i>) [A194] • Wetland and Waterbirds [A999]
<p>North Dublin Bay SAC (Site Code: 000206)</p> <p>Located approx. 9km to the east of the site.</p>	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140] • Annual vegetation of drift lines [1210] • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]

	<ul style="list-style-type: none"> • Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] • Embryonic shifting dunes [2110] • Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] • Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] • Humid dune slacks [2190] • <i>Petalophyllum ralfsii</i> (Petalwort) [1395]
<p>North Bull Island SPA (Site Code: 004006)</p> <p>Located approx. 9km to the east of the site.</p>	<ul style="list-style-type: none"> • Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] • Shelduck (<i>Tadorna tadorna</i>) [A048] • Teal (<i>Anas crecca</i>) [A052] • Pintail (<i>Anas acuta</i>) [A054] • Shoveler (<i>Anas clypeata</i>) [A056] • Oystercatcher (<i>Haematopus ostralegus</i>) [A130] • Golden Plover (<i>Pluvialis apricaria</i>) [A140] • Grey Plover (<i>Pluvialis squatarola</i>) [A141] • Knot (<i>Calidris canutus</i>) [A143] • Sanderling (<i>Calidris alba</i>) [A144] • Dunlin (<i>Calidris alpina</i>) [A149] • Black-tailed Godwit (<i>Limosa limosa</i>) [A156] • Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] • Curlew (<i>Numenius arquata</i>) [A160] • Redshank (<i>Tringa totanus</i>) [A162] • Turnstone (<i>Arenaria interpres</i>) [A169] • Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] • Wetland and Waterbirds [A999]
<p>Poulaphouca Reservoir SPA (Site Code: 004063)</p> <p>Located approx. 21.6km to the south of the site</p>	<ul style="list-style-type: none"> • Greylag Goose (<i>Anser anser</i>) [A043] • Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]

8.3.3. I would note that the only pathway between the site and the Natura 2000 sites in Dublin Bay are via surface water drainage and wastewater drainage. In addition, the Poulaphuca Reservoir is considered to be within the zone of influence of the development as the SPA is the source of drinking water for Dublin City, including the proposed development site.

8.4. Conservation Objectives:

8.4.1. The Conservation Objectives for the relevant designated sites are as follows:

European Site	Conservation Objectives
<p>South Dublin Bay SAC (Site Code: 000210) Located approx. 5.8km to the east of the site</p>	<ul style="list-style-type: none"> The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the Annex I habitat listed as a Qualifying Interest, as defined by a list of attributes and targets
<p>South Dublin Bay & River Tolka Estuary SPA (Site Code: 004024) Located approx. 5.8km to the east of the site.</p>	<ul style="list-style-type: none"> The NPWS has identified site-specific conservation objectives to maintain the favourable conservation condition of the bird species listed as Qualifying Interests, as defined by a list of attributes and targets. No site-specific objective has been set for the Grey Plover and it is proposed for removal from the list of Special Conservation Interest for the SPA.
<p>North Dublin Bay SAC (Site Code: 000206) Located approx. 9km to the east of the site.</p>	<ul style="list-style-type: none"> The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the following Annex I habitat listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> Mudflats and sandflats not covered by seawater at low tide [1140] Petalophyllum ralfsii (Petalwort) [1395] The NPWS has identified a site-specific conservation objective to restore the favourable conservation condition of the following Annex I habitat listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> Annual vegetation of drift lines [1210]

	<ul style="list-style-type: none"> ○ Salicornia and other annuals colonising mud and sand [1310] ○ Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330] ○ Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] ○ Embryonic shifting dunes [2110] ○ Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] ○ Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] ○ Humid dune slacks [2190]
<p>North Bull Island SPA (Site Code: 004006)</p> <p>Located approx. 9km to the east of the site.</p>	<ul style="list-style-type: none"> ● The NPWS has identified site-specific conservation objectives to maintain the favourable conservation condition of the bird species listed as Qualifying Interests, as defined by a list of attributes and targets.
<p>Poulaphouca Reservoir SPA (Site Code: 004063)</p> <p>Located approx. 21.6km to the south of the site</p>	<ul style="list-style-type: none"> ● There is a generic conservation objective to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for the SPA: <ul style="list-style-type: none"> ○ Greylag Goose (<i>Anser anser</i>) [A043] ○ Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]

8.5. Potential Significant Effects

8.5.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 5.8km from the boundary of any designated site. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within a urbanised / suburban environment. No qualifying species or habitats of interest, for which the designated sites are so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.
- **Water Quality:** The proposed development is to connect to existing public water services which will ultimately discharge to the Ringsend Wastewater Treatment Plant. It is noted that the Ringsend Treatment Plant is not currently compliant with its emission limit standards, but that work is underway to increase capacity. It is noted that notwithstanding the current issues with the WWTP, evidence suggests that no negative impacts to the Natura 2000 sites in Dublin Bay, and the habitats and species they support, are occurring from water quality. Having regard to the nominal scale of the proposed development in the context of the overall licenced discharge at the Ringsend WWTP, I am generally satisfied that the development, if permitted, is unlikely to impact on the overall water quality within Dublin Bay. Notwithstanding the capacity issues at the plant, the Liffey Estuary and Dublin Bay are currently classified by the EPA under the WFD 2010-2015 as being of 'unpolluted' water quality status. With the upgrading of the WWTP, the pollution level of future discharges to Dublin Bay will decrease in the medium to longer term.

I am generally satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in Dublin Bay can be excluded given the distance to such sites, the nature and scale of the development and the dilution factor associated with the hydrological connection.

8.6. In Combination / Cumulative Effects

- 8.6.1. Given the negligible contribution of the proposed development to the wastewater discharge from Ringsend, I consider that any potential for in-combination effects on water quality in Dublin Bay can be excluded. In addition, I would note that all other projects within the Dublin Area which may influence conditions in Dublin Bay via rivers and other surface water features are also subject to AA.

8.7. Conclusion on Stage 1 Screening:

- 8.7.1. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

9.0 Recommendation

I recommend that planning permission be **Refused** for the proposed development for the following stated reasons.

10.0 Reasons and Considerations

1. Having regard for Section 11.1.5.1 CHC2 (b) and (d), and Section 16.2.2.2 of the Dublin City Council Development Plan 2016-2022; it is considered that the design, form, height, siting and materials of the proposed new development are of poor architectural quality and unsympathetic to the character of the Protected Structure, its historic curtilage and its setting. Therefore, the proposal would seriously injure the amenity, legibility and special architectural character of the protected structure and its historic and architectural setting.

Furthermore, the proposed development would result in an unacceptable level of overlooking into the northern elevation of this Protected Structure and would be contrary to Policy CHC2 of the Dublin City Development Plan 2016-2022 and contrary to the proper planning and sustainable development of the area.

2. Policy 16.10.17 of the Dublin City Council Development Plan 2016-2022 provides that "the planning authority will actively seek the retention and re-use of buildings/ structures of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city." The characterful 20th Century house (Kedleston) makes a positive contribution to the special historic and architectural character of the area. The demolition of this fine building would therefore contravene Policy 16.10.17 of the Dublin City Council Development Plan 2016-2022 and the construction of a new 3-storey terrace of 5 houses in its place would seriously injure the amenities of the historic area.

3. The proposed development of five houses on this site, due to the insufficient private amenity space to cater for this development would represent overdevelopment of this site and would seriously injure the residential amenities of the future occupants of the houses and would be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

27th August 2021