



An
Bord
Pleanála

Inspector's Report

ABP-310252-21

Development	Construction of 34 apartments, comprising two buildings. Demolition of shed.
Location	Site to the side/rear of 65, 66 &, 66A, Clanbrassil Street Lower, Dublin 8, D08 RX5N
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2305/21
Applicant(s)	EWR Development Group Limited
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	EWR Development Group Limited
Observer(s)	(1) Gerard Foote & Deidre Thompson (2) Mark Hughes & Conor Paul Whyte (3) Peter Mansfield (4) Ed McGinley (5) Patrick O'Donnell & Claire Brown

(6) Brenda Doyle

(7) Concerned Residents in Raymond Street, South Circular Road & Clanbrassil Street.

(8) Zoe Liston

(9) Colm Handley & Julie Kelly

Date of Site Inspection

24th November 2021

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.1168 hectares, is located on the western side of Clanbrassil Street Lower in Dublin city centre. The appeal site consists of an open area to the side and rear of an existing apartment development along Clanbrassil Street (65, 66 and 66a). The existing development is a four-storey apartment block. The site encompasses the area to the side/south, which has vehicular entrance and an open area to the rear/west. This area is currently underutilised and is not in use as open space or parking for the existing development. At the time of the site visit this area is being used temporarily for food vans/stalls. In terms of adjoining development, to the north is an open yard area to the rear of no. 70 (Leonards Court). To west is McCann's building provider, with an open yard area adjacent the site boundary. The McCann's property partially wraps around the southern boundary with a single-storey structure located adjacent the boundary. Also to the south is no. 64, which is a two-storey derelict/vacant structure with a shed behind it.

2.0 Proposed Development

2.1. Permission is sought for the provision of 34 new residential apartments, comprising 12 no. studio units, 9 no. 1 bed units and 13 no. 2 bed units. The development is planned in two buildings, the front building presenting a new frontage over four levels to Clanbrassil Street Lower, the rear building is planned over five levels, including a setback penthouse level. Bridges link the two buildings at each level including. A communal residents' roof garden is proposed on the roof of the front building. A communal residents' courtyard is proposed at ground floor level between the buildings. All communal plant, bin storage and bicycle parking for 64 no. bicycles is proposed at ground level. The demolition of an existing single-storey shed (c. 90m) on site to the rear of 65/66 Clanbrassil Street Lower is proposed to enable the works. The development is accessed for residents from Clanbrassil Street Lower. The total site area is 1,168sqm and the gross floor area proposed is 2,644sqm.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused based on four reasons...

1. Having regard to the scale, mass and form of the proposal it is considered that the proposed development would constitute overdevelopment of the site and would result in an unacceptable impact on the amenity of neighbouring occupiers by virtue of creating an overbearing effect, overlooking and loss of daylight and sunlight to occupiers of Leonard's Court and apartments within 65/66A Clanbrassil Street Lower. The proposed development would, therefore, seriously injure the amenities of neighbouring occupiers, would be contrary to the zoning objective and to Chapter 16 of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

2. The proposed development is considered to be a poor example of backland development that removes an existing vehicular access from Clanbrassil Street Lower and by way of its layout and overall scale would restrict future development potential of the neighbouring sites to the south and west of the site. This would be contrary to Chapter 16 of the City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

3. The proposed development, by virtue of the lack of outlook to the lower ground units and lack of sunlight to the proposed courtyard area of communal open space, would provide a poor standard of residential accommodation for future occupiers. The proposed development would therefore be contrary to the provisions of the Guidelines on Sustainable Urban Housing: Design Standards for New Apartments (2018), the provisions of Chapter 16 of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

4. The development is located on a heavily trafficked road which is a Quality Bus Corridor and planned Bus Connects Core Bus Corridor route and in an area where

there is limited on street loading facilities and car parking available. The development by virtue of inadequate provision for servicing, delivery, drop-off and accessible parking facilities would generate servicing activity and overspill parking onto Clanbrassil Street Lower and corresponding footpaths thereby causing an obstruction to pedestrians , cyclists, bus operations and other road users. The development is considered contrary to the Dublin City Development Plan Section 16.38 and the Design Standards for New Apartments, Section 4.23, and would endanger public safety by reason of traffic hazard. The development would therefore be contrary to the proper planning and sustainable development of the area, and would set an undesirable precedent for similar developments in the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (20/04/21): Concerns identified included impact on existing residential properties through loss of light and overlooking, poor quality amenity spaces and outlook, issues concerning parking/loading servicing facilities or lack thereof and impact on development potential or adjoining sites. Refusal was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Drainage Division (15/03/21): No objection.

Transportation Department (13/04/21): Refusal recommended due to inadequate provisions of servicing, delivery, drop-off and accessible parking facilities and the generation of turning movements and overspill parking.

City Archaeologist (14/04/21): No objection subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1 14 submission were received. The issue raised included...

- Excessive density, scale, overdevelopment of the site, out of character in the area, insufficient quality for future residents, impact on existing properties in the vicinity through overlooking and overshadowing, traffic impact, insufficient parking, concern about development at McCann's yard and unauthorised development on the appeal site.

4.0 Planning History

5165/07: Permission granted to revise an existing permission (5638/03).

PL29S.208348 (5638/03): Permission granted for a four-storey building comprising of ground floor retail unit and apartments.

Adjoining sites...

20337/19: Permission granted for demolition of existing warehouse storage and construction of new warehouse unit.

5.0 Policy Context

5.1. Development Plan

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

Section 16.2.2.2. Infill development

The particular character of the city and its concentration of historic buildings means that most re-development opportunities are for 'infill development' i.e. gap sites within existing areas of established urban form. It is particularly important that the

proposed development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape. As such Dublin City Council will seek:

- To ensure that infill development respects and complements the prevailing scale, architectural quality and the degree of uniformity in the surrounding townscape.
- In areas of varied cityscape of significant quality, infill development will demonstrate a positive response to context, including characteristic building plot widths, architectural form and the materials and detailing of existing buildings, where these contribute positively to the character and appearance of the area.
- Within terraces or groups of buildings of unified design and significant quality, infill development will replicate and positively interpret the predominant design and architectural features of the group as a whole Chapter 16 | Development Standards: Design, Layout, Mix of Uses and Sustainable Design 310 | Dublin City Development Plan 2016–2022: Written Statement.
- In areas of low quality, varied townscape, infill development will have sufficient independence of form and design to create new compositions and points of interest and have regard to the form and materials of adjoining buildings, where these make a positive contribution to the area.

Section 16.2.2.2 Infill Development

- Infill development must respect and complement the prevailing scale, architectural quality and degree of uniformity in the surrounding townscape.

Section 16.5- Plot Ratio Z5, City Centre 0.5-2.0

A higher plot ratio may be permitted in certain circumstances such as:

- Adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed.
- To facilitate comprehensive re-development in areas in need of urban renewal.
- To maintain existing streetscape profiles.

- Where a site already has the benefit of a higher plot ratio.
- To facilitate the strategic role of institutions such as hospital.

Site Coverage 16.6- Z1 45-60%

Section 16.7.2- Building Heights

- Low Rise Inner City- Up to 24m residential

5.2 National Policy Project Ireland 2040 –

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

- National Policy Objective 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- National Planning Objective 13: In urban areas, planning and related standards, including, in particular, height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.
- National Policy Objective 27: Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.
- National Policy Objective 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights. Section 28 Ministerial Guidelines The following list of Section 28 Ministerial

Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)
- Sustainable Urban Housing, Design Standards for New Apartments, (Updated) Guidelines for Planning Authorities (2020)
- Urban Development and Building Height Guidelines for Planning Authorities (December, 2018)
- Design Manual for Urban Roads and Streets (December 2013)

5.3 **Natural Heritage Designations**

None in the vicinity.

5.4 **EIA Screening**

- 5.4.1 The proposed development is of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)) but substantially under the threshold of 500 units and the development is well below the threshold of urban development which would involve an area greater than 2 hectares (appeal site is 0.01168 hectares) in the case of a business district to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the site on lands zoned for urban development, the availability of public sewerage and water supply, the absence of features of ecological importance within the site, the nature of the adjoining land uses as residential and commercial. I conclude that there is no real likelihood of significant effects on the environment based on the nature, size and location of the proposed development. No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by David Mulcahy Planning Consultants Ltd on behalf of EWR Development Group. The grounds of appeal are as follows...

- In relation to overbearing impact the only existing property relevant is no.s 65/66a and 67 which face the proposed development. It is stated that the level of separation of 16.8m is sufficient and reasonable in city centre location such as this.
- The obscure glazing provided for units C01, C02 and C03 is sufficient to provide enough light and amenity to future residents and protect the amenities of existing residents.
- In relation to refusal reason no. 2 it is noted that there is no written policy or objective identifying the existing access point as one in need of preservation to facilitate future development and there is no masterplan or framework plan for the area. The requirement to keep the existing access free is an unreasonable imposition.
- The applicant/appellant note that a masterplan prepared by them shows how development of the backland areas could be facilitated with a new street from Blakpitts to South Circular Road. The existing access is narrow and does not allow for passive surveillance with it noted a derelict property to the south of such may facilitate future access.
- In relation to the development potential of the site to the west it is noted that there was no objection from the owners of the site (McCann's) and the appellant refers to the masterplan they prepared showing how the area could be developed.
- The outlook of existing units post development will be reasonable and such will be onto communal open space. In relation to lack light to communal space it is noted that the space provided at ground floor level receive the recommended level of sunlight (at least 50% for 2 hours on the 21st of March

with the roof space receiving 100%). The applicant/appellant is amendable to condition requiring a landscaping plan.

- In relation to traffic issues a traffic report is submitted. This indicates that the Bus Connects proposal does not include Bus Lane adjacent the site and provides for 6 on street car parking space approximately 135m from the site. The site is in an area accessible to public transport and car sharing infrastructure with no requirement for parking, which is consistent with development plan policy.
- If considered necessary the applicant has submitted an alternative design which reduces the no. of apartments in the front block from 6 (3 no. two bed and 3 no. one bed units) to 3 (3 no. two bed) with a reduced physical footprint of this block. It is stated that the amended design meets all relevant standards.

6.2. Planning Authority Response

6.2.1 Response by Dublin City Council

- The Planning Authority remains of the view that the proposed development should be refused on the basis of the reasons set out in the planning report.

6.3. Observations

6.3.1 Observations have been received from...

Gerard Foote & Deidre Thompson, 47 Raymond Street, South Circular Road, Dublin 8.

Mark Hughes & Conor Paul Whyte, 13 Raymond Street, Dublin 8.

Peter Mansfield, 60 Leonards Court, Clanbrassil St, Dublin 8.

Ed McGinley, 40 Raymond Street, Dublin 8.

Patrick O'Donnell & Claire Brown, 46 Raymond Street, South Circular, Dublin 8.

Brenda Doyle, 146, South Circular Road, Dublin 8.

Concerned Residents in Raymond Street, South Circular Road & Clanbrassil Street.

Zoe Liston, 34 Raymond Street, South Circular Road, Dublin 8.

Colm Handley & Julie Kelly, 44 Raymond Street, South Circular Road, Dublin 8.

The issues raised in the observations can be summarised as follows...

- Excessive density and height. Overdevelopment of the site.
- Overlooking of adjoining properties.
- Adverse impact on daylight and sunlight to adjoining properties, overshadowing of adjoining properties. Poor standard of accommodation for future residents and adverse impact on existing community in the area.
- Out of character with established pattern and form of development. Nature and type of development would not contribute to the area or housing needs currently experienced.
- Inadequate parking with increased pressure on existing streets in the vicinity.
- Similar development refused under 3955/19 at 39-42 Clanbrassil Street Upper.
- Proposed masterplan carried out without consultation of the Council and local residents.

7.0 **Assessment**

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

Principle of the proposed development/zoning objective

Quality of residential development/Development Control Objectives

Visual Impact/Architectural Character

Adjoining Amenity

Pattern of development/development strategy

Traffic Impact

Flood Risk

Architectural heritage/archaeological impact:

Revised proposal

7.2. Principle of the proposed development/zoning objective:

7.2.1 The appeal site is zoned Z1 with a stated objective 'to protect, provide and improve residential amenities'. The proposal for additional housing is acceptable within this zoning objective subject to adequate regard to the amenities of existing properties. The site is located in the city centre and is in a highly accessible location in walking distance of the core of the city and a wide range of services and employers as well as being well served by public transport with the Harcourt Luas stop a 14min walking distance (1km) from the site and existing bus services including Bus Connects proposal running along Clanbrassil Street. The appeal site is an appropriate location for additional residential development and the principle of the proposed development is acceptable.

7.3 Quality of residential development/Development Control Objectives:

7.3.1 The proposal is for 34 no. apartments consisting of 12 no. studio units, 9 no. 1 bed units and 13 no. 2 bed units. The relevant standards for quality of residential development is the Sustainable Urban Housing: Design Standards for New Apartments (December 2020).

7.3.2 Minimum floor area for apartments under Section 3.4 of the apartment guidelines is 37sqm, 45sqm and 73sqm (two bed 4 person units) for studio, one and two bed units respectively. In the case of the proposed development the minimum floor area is met in all circumstances with the provision of...

12 no studio units (all floor area 40sqm)

9 no. one bed units (floor area 47.5 - 59.3sqm)

13 no. two bed units (4 person) (floor area 79.8 - 94.4sqm)

Under Section 3.8 there is a requirement for “the majority of all apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10% (any studio apartments must be included in the total, but are not calculable as units that exceed the minimum by at least 10%)”. In this case the proposal does meet the requirement to exceed the minimum floor area by at least 10%.

7.3.3 Under Specific Planning Requirement 4

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

- (i) A minimum of 33% of dual aspect units will be required in more central and accessible urban locations, where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate.
- (ii) In suburban or intermediate locations it is an objective that there shall generally be a minimum of 50% dual aspect apartments in a single scheme.
- (iii) For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha , planning authorities may exercise further discretion to consider dual aspect unit provision at a level lower than the 33% minimum outlined above on a case-by-case basis, but subject to the achievement of overall high design quality in other aspects.

Out of the 34 no. apartments proposed, 17 are single aspect with all other units being dual aspect. This is a percentage of 50%, which would meet the recommendations of the guidelines of 33%.

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

proposed meet all standards set down under Appendix 1 of the apartment guideline, in relation to room dimensions, aggregate floor areas and storage provision. The proposal provides for a communal amenity space at ground level between the five-storey block and existing development along Clanbrassil Street Lower as well as a roof terrace on the front block with bridges connecting the two blocks at various levels. The provision of open space is c.160sqm at ground level and c.190sqm at roof terrace level. Recommended standards for communal open space are set out under Appendix 1 of the apartment guidelines with a standard of 4sqm per studio unit, 5sqm per one bed unit and 7sqm per two bed unit (four persons) giving an overall requirement of 184sqm. The guidelines do note that “for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, communal amenity space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality”. The level of amenity space provided is in excess of the recommended standard under the apartment guidelines.

7.3.4 In considering daylight and sunlight impacts, the Apartment Guidelines (2020) state that PA’s should have regard to quantitative performance approaches outlined in guides like the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’ (Section 6.6 refers). I have had regard to both documents. A Daylight and Sunlight Assessment report has been submitted with the application, which I have considered. I note that internal spaces have been examined. The potential impact in terms of neighbouring properties has also been addressed, which I discuss separately in section 7.5 hereunder. With regard to the internal spaces, the apartment units from ground to fourth floor have been analysed in the submitted report to determine the Average Daylight Factor for each unit. BRE209 uses the recommendations of BS8206-2 Code of practice for daylighting for ADF of 5% for well-lit space, and also the specific minimum standards for different residential room types as follows: Kitchens min. 2.0%, Living Rooms min 1.5%, Bedrooms min 1.0%. I note the updated BS EN 17037:2019 has replaced BS8206-2, however, I note BS 2008 remains the applicable standard, as provided for in the s.28 Guidelines and Development Plan, and notwithstanding this the BS and BRE guidance allow for flexibility in regard to targets and do not dictate a mandatory requirement. The

British Standards BS 8206-2:2008 are where these values in the BRE guidelines are derived from. The BS guidance states that “where one room serves more than one purpose, the minimum average should be for the room type with the highest value. For example, in a space which combines a living room and a kitchen the minimum average daylight factor should be 2%). The applicants report indicates target value of 1% for bedrooms and 1.5% for living areas. The apartment feature spaces with shared functions (kitchen, dining and living (KDL). The assessment uses the living space 1.5% target for these spaces.

7.3.5 The results for ADF show that all rooms apart from two bedrooms meet the recommended targets. In this case all living spaces, which have a shared function are above the 2% target for KDL spaces under BS 8206-2:2008. In the case of the two bedrooms I would note that given these are bedroom spaces and both have direct access to a balcony area the proposal would give rise to a satisfactory level of amenity. I would be of the view that internal space provided are largely compliant with the recommended standards set down under the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’.

7.3.6 The BRE guidelines state that in terms of sunlight access, for an external garden or amenity space to appear adequately lit throughout the year, it should be capable of receiving at least two hours of sunshine on 21st March on 50% of the space. The A Daylight and Sunlight Assessment report submitted initially did not include an assessment of communal amenity space with the scheme. A revised Daylight and Sunlight Assessment report was submitted with the appeal (amended scheme) and such includes an assessment of the communal amenity spaces in the proposed development. There is public open space provided between the new five-storey block and the existing apartment block along Clanbrassil Street and a roof terrace on the front block proposed. The results indicates that both spaces will receive at least two hours of sunshine on 21st March over 50% (52.4%). The assessment does provide a separate analysis of the two spaces (that at ground floor level and that at roof level) and both including the ground floor space meet the standard independently. Permission was refused on the basis that the proposed development,

by virtue of the lack of outlook to the lower ground units and lack of sunlight to the proposed courtyard area of communal open space, would provide a poor standard of residential accommodation for future occupiers and be contrary to the provisions of the Guidelines on Sustainable Urban Housing: Design Standards for New Apartments (2018), the provisions of Chapter 16 of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

7.3.7 The proposal provides for a block running parallel to the existing development along Clanbrassil Street Lower and a courtyard area between the proposed and existing. I would disagree with the Planning Authority's assessment and note that the pattern of development proposed is not an uncommon or atypical pattern of standard of development in a city centre location such as this. The provision of a ground floor level space in between blocks of similar scale as is the case with the proposed and existing development and at a depth proposed is acceptable. An aerial view of the development in the vicinity indicates such a pattern of development is pre-existing at this location (Leonards Court and St. Patrick Court to the north. I would consider that the outlook of the ground floor apartments is acceptable with such having an outlook on the ground level open space and an open space area on the western side of the development. As noted above the level of provision of dual aspect units/single-aspect units conform with the Apartment guidelines, which are the relevant standards. The development is well-serviced with communal open space, with a large roof terrace in addition to the ground level spaces and the totality of the open space areas meet the recommended standards under the BRE guidelines including daylight levels within the proposed apartments, in particular living spaces. The city centre context of the site has been taken into account and the pattern and scale of development is not out of character at this location.

7.3.8 The proposal provides for a development with plot ratio of 2.28 and site coverage of 49.8%. The permissible plot ratio within the Z1 zoning is 0.5-2.0 (Section 16.5) under the City Development plan. In relation to site coverage indicative site coverage for the Z1 zoning is 45-60% (section 16.6) under the City Development plan. Site

coverage is compliant with Development plan policy. Plot ratio is marginally higher than the recommended standard, however policy does allow for consideration of higher plot ratios as outlined under the policy Section above. In this case the site is a city centre location that is highly accessible and an appropriate location for higher densities. I would consider an increased plot ratio would be justified subject to the development being satisfactory in terms of other aspects concerning design, adjoining amenity and traffic impact, which are aspects to be addressed in later sections of this report.

7.3.9 The development at its highest point is 17m in height relative to the level of Clanbrassil Street Lower. There is a fall in levels on site moving west with the McCann's site to the west being approximately 2m lower than the finished floor level of the development. This would mean the development at its highest point is 19m relative to the level of the lands to the west. In terms of building height Section 16.72 of the City Development Plan sets out policy and identifies areas in which low-rise, mid-rise and high-rise structures are permissible. In the case of the Inner City low rise is indicated as being 24m in height for residential and 28m for commercial development. I would be of the view that the overall height of the structure proposed is consistent with Development Plan policy in relation to building heights.

7.4 Visual Impact/Architectural Character:

7.4.1 The development consists of two separate blocks. The smaller of the two blocks is four-storeys and wraps around the southern and western elevation of the existing apartment block fronting Clanbrassil Street Lower (no. 65). This block has a road frontage along Clanbrassil Street Lower and fills an existing gap/vehicular access in the streetscape between nos 64 and 65. The larger of the two blocks is a five-storey block with the fourth floor level setback located to rear of no. 65, 66 and 66a and adjacent the western boundary of the site. There is varied pattern and scale of development in the area characterised by four/five-storey development located along the western side of Clanbrassil Street Lower, an open site with commercial development (McCann's) to the west and beyond such single-storey split level dwellings along Raymond Street backing onto the commercial site (McCann's).

7.4.2 The site has limited road frontage and it is proposed to infill such with a four-storey structure. Such ties in well with the established pattern and scale of development, which is four-storey apartment development at no. 66, 65 and 65a. I would be of the view that design and architectural character of development would integrate successfully with the design, scale and architectural character of the existing streetscape and be acceptable in the context of the visual amenities of the area. In relation to the five-storey block, it's location to the rear of the site away from the public road and screened by existing and proposed development of similar height along Clanbrassil Street Lower, would mean such is not highly visible from the public realm. Notwithstanding such the overall scale and architectural character of such is very much similar to existing development along the western side of Clanbrassil Street Lower as well as existing structures on sites to the north that are to the rear of development along the public road. The observations raise concern regarding the visual impact of the five-storey block from the rear gardens and rear elevations of the existing dwellings on the eastern side of Raymond Street. I would be of the view that the level of separation between the existing dwellings and proposed block is significant and that there is an existing commercial yard between them. I would be of the view that the visual impact and change to outlook from the rear of these properties would not be out of keeping in a city centre location such as this and would note there are existing apartment blocks with similar positioning and building line to the north of the site. I would consider that the overall design and scale of the proposal would be satisfactory in the context of the visual amenities of the area.

7.5 Adjoining Amenity:

7.5.1 There are a number of uses on the adjoining sites. The proposal was refused on the basis that it would constitute overdevelopment of the site and would result in an unacceptable impact on the amenity of neighbouring occupiers by virtue of creating an overbearing effect, overlooking and loss of daylight and sunlight to occupiers of Leonard's Court and apartments within 65/66A Clanbrassil Street Lower. The rear elevation of no. 65/66A has a mostly blank elevation with some of the apartments having a windows (two in each case) on the first, second and third floor. The

apartments at no. 67 have windows on the rear elevation as do the apartment in Leonards Court to the north.

7.5.2 Section 3.2 of the Urban Development and Building Height Guidelines (2018) states that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. The Guidelines state that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the PA or ABP should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and / or an effective urban design and streetscape solution. The Sustainable Urban Housing Design Standards for New Apartments Guidelines (updated 2020) also state that PA's should have regard to these BRE or BS standards (S6.6 refers).

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

kitchen/ bedrooms; and (2) overshadowing and loss of sunlight to the private amenity spaces associated with the houses (rear gardens in this instance).

7.5.4 A Daylight and Sunlight Report has been submitted with the application (03/02/2021). The report focuses on properties in the vicinity with focus on the apartments at no. 65/66 with windows on the rear elevation, the apartments at no. 67 and at Leonards Court to the north (no. 68) I have considered the reports submitted by the applicant and have had regard to BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) –

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

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

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

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

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

(v) Is the room impacted, is area of working plan which can see the sky less than 0.8 the value of before? (i.e., of 'yes' daylighting is likely to be significantly affected).

Where room layouts are known, the impact on daylight distribution in the existing buildings can be assessed.

7.5.7 There is an assessment of VSC for 25 windows including the windows on the rear of no. 65/66, no. 67 and No. 68 (Leonards Court). All windows assessed are currently above the 27% VSC level. Post development 14 of the windows retain a level above 27%. Of the remaining windows, 6 have a post development standard of > than 20% with the applicant noting that a 20% standard is classified as good for an urban area. The assessment indicates that 20 of the 25 windows pass the test for VSC. The remaining 5 windows (including the three windows serving no. 65/66) fall below the 27% standard and by more than 80% of their form value and fail the test for VSC. In the case of these windows an assessment of Average Daylight Factor is carried out. Window nos 21 to 25 inclusive serve bedrooms and all retain an ADF above 1%, which is in line with BRE recommendations. Window nos 21 and 22 are on the rear elevation of no. 65 (ground and first floor level), whereas window nos 23 to 25 are on the rear elevation of no. 66a and serve bedrooms at first, second and third floor level and are recessed relative to no. 65/66. It is notable that the apartments in no. 66a (development permitted under ref no. 5165/07, floor plans attached) consist of two bedroom apartments with the two bedrooms having the windows located in the recess to the rear. The sunlight and daylight assessment includes the west facing bedroom windows but neglects to provide an assessment of the north facing bedroom windows.

7.5.7 The appellant has submitted a revised scheme in which the smaller block with road frontage has been reduced in scale and a revised Daylight and Sunlight report has been submitted. The results of the assessment for the revised scheme show little difference in terms of VSC with a marginal improvement for window nos 21 and 22 and similar results for window nos 23-25. The assessment submitted still does not provide an assessment of the north facing bedroom windows, however such are likely to have a similar VSC level as the east facing windows.

7.5.8 I would be of the view that the development as proposed conforms to a pre-existing pattern of development and provides for a development of a city centre site, which is appropriate in nature scale at this location. I would consider that the level of light to existing windows on adjoining properties would be acceptable in the context of an

urban city centre location. The applicants refer in the Daylight and Sunlight report that in the case of the five windows most impacted in relation to VSC, that these windows achieve the recommended standard in terms of Average Daylight Factor (ADF). I would note that ADF only counts as a measurement of the proposed development under the BRE guidelines and not for assess existing development, such is not basis for reaching a conclusion based on the guidelines. I would consider that having regard to the urban context of the site, the pre-existing pattern of development and to fact that the main living spaces of the existing apartments are unaffected by the proposed development, that the overall impact of the proposal in term of daylight and sunlight to adjoining properties is satisfactory. I consider that this impact should be considered in light of the urban location of the site in an inner-city area. The preservation of high levels of daylight / sunlight to these properties would unduly constrain the delivery of high density development on a site which can sustainably accommodate increased scale. Therefore, I consider the impact upon these adjacent properties daylight from the proposed development to be acceptable, given the inner-city character of the site.

7.5.9 In relation to the issue of overlooking, where the development adjoins the western and northern boundary it overlooks a commercial site. In the case development to north there are no windows on the northern elevation apart from the penthouse level, which is set back. The five-storey block has an east facing elevation facing the rear elevation of no. 65, 66/66a and 67. I would be of the view that the level of separation between this façade and existing development and windows is sufficient to protect the amenities of adjoining properties. I would note that the level of separation is similar to developments to the north and the five-storey block continues a pre-existing pattern of development established on sites to the north. The smaller block of the two features three apartments (C.01, C.03 and C.05) with a north facing widow serving living space that is in close proximity to existing bedroom windows. The proposal was for obscure glazing. The applicant/appellant has submitted a revised proposal in which the smaller block is reduced in physical footprint and reduced in terms of the number of apartments provided from six to three and the provision of no windows on the northern elevation. I would be of the view that the revised proposal is an improvement and removes the north facing windows, which would be located

perpendicular to the existing west facing windows. If permitted the amended proposal should be implemented, which reduces the number of total units from 34 to 31.

7.5.10 The observations include concerns in particular from the residents along Raymond Street to the west. A terrace of dwellings on the eastern side of the street backs onto the McCann site to the west of the development with concerns raised above impact of the proposal in terms of existing residential amenities, loss of privacy and outlook. As noted above the development is sufficiently separated from the existing dwellings along Raymond Street as to have no significant or adverse visual impact. I would note that the appeal site and development is located in such a direction and distance from the existing dwellings that no analysis of daylight or sunlight impact would be required under the BRE guidelines. I would also be of the view that the scale of the apartment development proposed and its proximity in relation the existing dwellings is such that, no adverse impact on existing residential amenities would arise in terms of overshadowing (the overshadowing analysis submitted demonstrates such) or the loss of privacy and I would be of the view that relationship between the proposed development and the existing dwellings is an acceptable situation in a city centre context such as this.

7.6 Pattern of development/development strategy:

7.6.1 The proposal was refused on the basis that it was considered to be a poor example of backland development that removes an existing vehicular access from Clanbrassil Street Lower and by way of its layout and overall scale would restrict future development potential of the neighbouring sites to the south and west of the site. The applicant submitted a design report, which includes a possible masterplan for development in the wider area and in particular the site to the west, which is currently occupied by McCann's providers. This is narrow long site that runs along the western boundary of the site and has a vehicular entrance off South Circular Road.

7.6.2 In terms of pattern of development I would be of the view that the proposal does conform to a pre-existing pattern of development and is on the same alignment as existing apartment blocks within Leonards Court and St. Patricks Court to the north. I do not consider the loss of the vehicular access off Clanbrassil Street Lower would be detrimental to future development in the area and would note that the site is a city centre location already characterised by apartment development. The need for vehicular access is questionable as the site is in highly accessible location and well serviced by public transport. It is wholly appropriate that new development at a location such as this does not require off-street car parking.

7.6.3 In relation to the masterplan, such has no status and is a notional exercise provided in response to pre-planning issues raised. Any proposal for development on the adjoining sites will subject to an application and public scrutiny and the current proposal is being assessed on its merits. I do not consider that loss of the vehicular access on site would impinge on the development potential of adjoining sites and note that McCann's site has road frontage on both the South Circular Road. Given the proposal is continuation of an established pattern of development, I am of the view that proposal would be acceptable in regards to the future development potential of the adjoining site. Having regard to the fact the proposal provides for an acceptable standard of development, is acceptable in regards to impact on adjoining amenities and is at an accessible city centre location, I am of the view what the proposal (amended proposal) is satisfactory in the context of the pattern of development.

7.7 Traffic Impact:

7.7.1 Permission was refused partly on the basis that "the development is located on a heavily trafficked road which is a Quality Bus Corridor and planned Bus Connects Core Bus Corridor route and in an area where there is limited on street loading facilities and car parking available. The development by virtue of inadequate provision for servicing, delivery, drop-off and accessible parking facilities would generate servicing activity and overspill parking onto Clanbrassil Street Lower and corresponding footpaths thereby causing an obstruction to pedestrians , cyclists, bus

operations and other road users. The development is considered contrary to the Dublin City Development Plan Section 16.38 and the Design Standards for New Apartments, Section 4.23, and would endanger public safety by reason of traffic hazard. The development would therefore be contrary to the proper planning and sustainable development of the area, and would set an undesirable precedent for similar developments in the area.

7.7.2 The existing layout along Clanbrassil Street provides for two way traffic with cycle lane markings on each side of the road as well as some on street car parking (pay and display with conflict between these markings and the cycle lane markings). The applicant/appellant has provided details of the Bus Connects proposal along this stretch of Clanbrassil Street Lower. The proposal provides for two way traffic, dedicated bus lanes and dedicated cycle lanes along the public road. It is notable that along the western side of Clanbrassil Street Lower from 56 to 78 and including the appeal site no Bus Lane is provided on the western side of the road with a bus lane only on the eastern side. The proposal provides for a dedicated cycle lane with provision of parking in an existing layby approximately 135m from the appeal site.

7.7.3 I would first state that the appeal site is located on an area that has never been available or used for off-street car parking to serve any existing development at this location. Notwithstanding such the proposal for a residential development at this location without any off-street car parking is acceptable. The site is a city centre location, highly accessible to for other modes of transport including public transport (Luas and bus services), pedestrian and cyclists. The provision of parking would not be realistic and would impact on the efficient and use of city centre land for new residential development. The refusal reason appears to relate to the lack of provision for service vehicles, accessible parking and drop-off. I would be of the view that the is an unfair reason for refusal as there is no scope for provision of such at this location with the Bus Connects proposal dictating the configuration and parking layout along the road frontage. The appeal site is a city centre location and there is existing apartment development along the western side of the street. I would be of the view that the provision of additional development at this location, subject to it

being satisfactory in terms of overall design and quality should be not restricted on the basis of the traffic grounds and lack of control over the design of the street layout. I would acknowledge the fact that a parking layby is provided a short distance from the site under the Bus Connects proposal and would consider such is close proximity to service both existing and proposed apartment development in the vicinity.

7.8 Revised scheme:

7.8.1 As noted in various sections, the applicant appellant ha submitted an amended proposal for considerations. The change relates to the smaller of the two blocks with road frontage. This block is reduced in footprint and now provides for 3 no. two bed apartments as opposed to 6 no. units (3 no. two bed and 3 no. one bed). The revised increases the level of open space at ground floor level and decreases the level as roof level. The revised proposal provides for 325.4sqm of communal spaces and still in excess of the standard recommended under the Apartment Guidelines. I would be of the view the amended scheme should be approved as it provides for a better relationship between it and the existing development as outlined above.

8.0 **Appropriate Assessment**

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

9.0 **Recommendation**

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

10.0 Reasons and Considerations

Having regard to the following:

- (a) the policies and objectives set out in the Dublin City Development Plan 2016-2022.
- (b) Housing for All (September 2021).
- (c) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018.
- (d) the Design Manual for Urban Roads and Streets (DMURS), 2013.
- (e) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009.
- (f) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018 and Sustainable Urban Housing, Design Standards for New Apartments, (Updated) Guidelines for Planning Authorities (2020).
- (g) the nature, scale and design of the proposed development.
- (h) the availability in the area of a wide range of social, community and transport infrastructure.
- (i) the pattern of existing and permitted development in the area.
- (j) the planning history within the area.

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

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by the further plans received by the Board on the 17th day of May 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

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

Reason: In the interest of visual amenity.

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

Reason: In the interest of residential amenity.

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

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

5. All service cables associated with the proposed development such as electrical, telecommunications and communal television shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

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

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

7. A plan containing details for the management of waste and, in particular, recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

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

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

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

The assessment shall address the following issues:

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

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

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

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

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

of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, hours of working, noise management measures and off-site disposal of construction and demolition waste.

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

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

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

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

Reason: In the interest of public health.

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

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Colin McBride
Senior Planning Inspector

10th December 2021