



An
Bord
Pleanála

Inspector's Report ABP-310498-21

Development	Construct a four-storey building containing eight apartments
Location	Montpelier Square, Montpelier Hill, Dublin 7
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2673/20
Applicant(s)	Double S Housing Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	1. Jennifer Boggs and Steven Dolan 2. Art Malone
Observer(s)	1. Rosemary Lenehan 2. Martina McMahan 3. Brian Carter
Date of Site Inspection	10 th November 2021
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1.** The appeal site comprises a stated area of 755sq.m and is located on Montpelier Hill in the Arbour Hill area west of Dublin city centre. It is currently occupied by a four-storey building containing 19 apartments fronting directly onto the street and featuring a central undercroft access to a hard-surfaced rear courtyard space. This courtyard is enclosed by masonry block and stone walls of approximately 2m to 3m in height. Two circulation cores to the rear of the building provide access to the upper-floor apartments, while access from the street is provided to several of the ground-floor apartments.
- 1.2.** The surrounding area is dominated by housing of various eras, as well as commercial uses, including the Ashling hotel complex directly opposite the site along Montpelier Hill and a legal firm's offices at no.55 Montpelier Hill adjoining the site to the west. No.55 is a former three-storey over basement house that has been listed in the Record of Protected Structure (RPS) accompanying the Dublin City Development Plan 2016-2022 (reference 5280) and it is identified as being of regional rating in the National Inventory of Architectural Heritage (NIAH) (reference 50070115). To the rear and east of the site is Dawson Place, a gated residential estate consisting of 25 two to three-storey terraced houses. Adjoining to the west of the site is another recent development to the area, known as Highlight Parkgate, which serves as a 319 bed space student residence. Ground levels on site are relatively level, with a gradual drop in levels in the surrounding area moving south towards the River Liffey.

2.0 Proposed Development

- 2.1.** The proposed development comprises the following:

 - the construction of a four-storey building with a stated gross floor area (GFA) of 553sq.m to the rear of the site to provide for eight one-bedroom apartments, each measuring between 48sq.m and 56sq.m and served by terraces or balconies;

- all associated development, including a central landscaped courtyard space, boundary treatments, services, lighting, the provision of bin stores, cycle parking and the maintaining of gates at the central undercroft access.

2.2. In addition to the standard drawings and documents, the planning application was accompanied by a Traffic Report, a Civic Utilities Planning Report, a Planning and Design Statement and photomontages of the proposed development.

2.3. Following a request for further information and an extension of the period to respond to this request, the proposed development was revised to provide for a two to three-storey building with a stated GFA of 334sq.m to provide for five one-bedroom apartments each measuring between 48sq.m and 60sq.m and served by terraces or balconies.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission for the proposed development, subject to 13 conditions of a standard nature, including the following:

- Condition 4 – development to comply with design option two submitted in April 2021;
- Condition 9(b) – submit a mobility management plan;
- Condition 10 – undertake archaeological monitoring.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Planning Officer (July 2020) noted the following:

- the rear of the site was previously permitted to provide 20 car parking spaces for the apartments under Dublin City Council (DCC) reference (ref.) 0291/98;
- given the location of the proposal to the rear of an apartment block and adjoining two-storey housing to the north and east, a four-storey building is considered excessive and would result in overdevelopment of the site;

- the building design would be acceptable, however, there are concerns regarding the proximity of the proposed building to the existing apartment building on site;
- the proposed unit floor areas, aspect, private amenity spaces and communal courtyard space would be acceptable;
- there are concerns with respect to the potential for overlooking from the upper-floor balconies into properties along Montpelier Hill;
- as the proposed bin stores would be shared with the existing apartment block and are of modest scale, revised proposals are needed;
- a sunlight and daylight impact assessment should be submitted;
- appropriate assessment (AA) and environmental impact assessment (EIA) would not be required for the project.

The final report of the Planning Officer (May 2021) reflects the decision of the Planning Authority and notes the following:

- the applicant has submitted proposals indicating a number of design options;
- in addressing the scale of the development, design option 2 would be appropriate and this would also address concerns in relation to overlooking of neighbouring properties;
- the reduced scale of the scheme and the increased provision of bin storage facilities amounting to five 1,100 litre bins, would be acceptable;
- the applicant's sunlight and daylight assessment clarifies that the revised scheme would comply with the Building Research Establishment (BRE) guidelines.

3.2.2. Other Technical Reports

- Engineering Department (Drainage Division) – no objection, subject to conditions previously outlined under DCC ref. 4440/19;
- City Archaeologist – a condition is recommended regarding archaeological monitoring;

- Transportation Planning Division – no objection, subject to conditions.

3.3. Prescribed Bodies

- Irish Rail - no response;
- Irish Water – no response.
- Transport Infrastructure Ireland (TII) – according to the Planning Officer’s report, no objection is raised, subject to conditions.

3.4. Third-Party Observations

- 3.4.1. During consideration of the application by the Planning Authority, eight third-party observations were received, five of which were from residents of Dawson Place and three from residents of Montpelier Hill. The issues raised in these observations are similar to those raised in the grounds of appeal and they are collectively summarised below under the heading ‘Grounds of Appeal’.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. Pre-planning discussions between representatives of the Planning Authority and the applicant are stated to have been undertaken in March 2019 under DCC ref. PAC0101/19, in order to discuss proposals for the construction of a six-storey building containing 18 apartments. The key issues raised at this pre-planning meeting related to design, the scale and massing of the proposals, as well as the associated impacts on adjoining properties. The Planning Authority state that enforcement ref. E0731/18 has been closed relating to a mobile home on the appeal site being used for habitable purposes.
- 4.1.2. A Social Housing Exemption Certificate (SHEC) was issued by the Planning Authority in March 2020 relating to the proposed development (DCC ref. 0092/20). There is an extensive planning history associated with the appeal site, including the following:

- DCC ref. 1837/96 – permission was granted by the Planning Authority in April 1997 for the demolition of a house and the construction of a two to three-storey building containing seven apartments;
- DCC ref. 3194/97 – permission was granted by the Planning Authority in June 1998 for the demolition of two houses and the construction of a three-storey building containing eight apartments;
- DCC ref. 0291/98 – permission was granted by the Planning Authority in June 1998 for the conversion of roofspace to provide five apartments with eight additional car parking spaces;
- ABP ref. PL29N.121881 (DCC ref. 2439/00) – permission was refused by An Bord Pleanála in May 2001 for the construction of two townhouses on a raised level and a change to the split-level car parking previously approved under DCC ref. 0291/98, due to the inappropriate provision of car parking and private amenity space to serve the townhouses;
- DCC ref. 4179/18 – retention permission was granted by the Planning Authority in April 2019 for an open area to the rear of the site to serve as a landscaped amenity space for the apartment building, as well as retention of plant areas at roof level and an apartment entrance off the street;
- DCC ref. 4440/19 – permission was refused by the Planning Authority in January 2020 for the construction of a six-storey building to the rear of the site comprising 15 apartments due to the height, depth and scale of the building, which would be incompatible with the surrounding character, the potential for overlooking and the inappropriate provision of communal open space.

4.2. Surrounding Sites

4.2.1. Reflective of the inner-urban character of the area, there has been a variety of planning applications in the immediate area, including the following:

- DCC ref. 3772/16 – following the withdrawal of a planning appeal (ABP ref. PL29N.248208), permission was granted by the Planning Authority in July 2017 for a student residence in 3 no. three to five-storey blocks accommodating 319 bed spaces on the adjoining site to the west.

5.0 Policy and Context

5.1. Development Plan

5.1.1. The appeal site is identified within the Dublin City Development Plan 2016-2022 as having a land-use zoning 'Z2 – Residential Neighbourhood (Conservation Areas)' with a stated objective 'to protect and/or improve the amenities of residential conservation areas'. The general objective for these lands is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. With the exception of no.55 Montpelier Hill, the adjoining sites are identified as having a land-use zoning 'Z1 – Sustainable Residential Neighbourhoods' with a stated objective 'to protect, provide and improve residential amenities'.

5.1.2. Relevant planning policies for residential development are set out under sections 5 (Quality Housing) and 16 (Development Standards) within Volume 1 of the Development Plan. Policy CHC4 aims to protect the special interest and character of Dublin's conservation areas. Other policies that are considered relevant to this appeal including the following:

- Policy QH5 – addressing housing shortfall through active land management;
- Policy QH6 – sustainable neighbourhoods with a variety of housing;
- Policy QH7 – promotion of sustainable urban densities;
- Policy QH8 – promoting the development of vacant and under-utilised sites;
- Policy QH11 – promotion of safety and security in new developments;
- Policy QH13 – new housing should be adaptable and flexible.

5.1.3. Other relevant sections of the Development Plan include the following:

- Section 4.5.3 - Making a More Compact Sustainable City;
- Section 4.5.9 – Urban Form and Architecture;
- Section 9.5.4 - Sustainable Urban Drainage Systems (SUDS);
- Section 11.1 – Built Heritage;
- Section 16.2 – Design, Principles and Standards;

- Section 16.7.2 - building height limits, including a 24m restriction for residential developments in the subject inner-city area;
- Section 16.10 - Standards for Residential Accommodation;
- Section 16.38 – Car Parking Standards (Zone 1 – maximum of one space per residential unit).

5.1.4. Dublin City Council has started the preparation of a new Dublin City Development Plan for the period 2022 to 2028. It is understood that a draft Development Plan is intended to be submitted to the members of the Council for their consideration in late November 2021.

5.2. Planning Guidelines

5.2.1. The following planning guidance and strategy documents are relevant:

- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020);
- Project Ireland 2040 - National Planning Framework;
- Urban Development and Building Heights Guidelines for Planning Authorities (2018);
- British Standard (BS) EN 17037:2018 ‘Daylight in Buildings’ (2018);
- Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice, (BRE, 2012);
- Architectural Heritage Protection – Guidelines for Planning Authorities (2011);
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) (2009).

5.3. Natural Heritage Designations

5.3.1. The nearest European sites to the appeal site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), comprise the following:

Table 1. Natural Heritage Designations

Site Code	Site Name	Distance	Direction
004024	South Dublin Bay and River Tolka Estuary SPA	4.3km	east
000210	South Dublin Bay SAC	5.4km	east
004006	North Bull Island SPA	7.4km	east
000206	North Dublin Bay SAC	7.4km	east
003000	Rockabill to Dalkey Islands SAC	11.2km	east
001209	Glenasmole Valley SAC	11.2km	south
000199	Baldoyle Bay SAC	11.8km	northeast
002122	Wicklow Mountains SAC	12.2km	south
004016	Baldoyle Bay SPA	12.2km	northeast
004040	Wicklow Mountains SPA	12.3km	south
000202	Howth Head SAC	13.1km	northeast
003000	Rockabill to Dalkey Island SAC	13.4km	east
000205	Malahide Estuary SAC	13.9km	northeast
004025	Malahide Estuary SPA	13.9km	northeast

5.4. Environmental Impact Assessment - Preliminary Examination Screening

5.4.1. An Environmental Impact Assessment (EIA) Screening report was not submitted with the application. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001-2021 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 ('business district' means a district within a city or town in which the predominant land use is retail or commercial use).

5.4.2. It is proposed to construct a building containing five apartments. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall stated area of 0.0755ha and is located within an existing built-up area, but not in a business district given the predominance of residential uses. The site area is, therefore, well below the applicable threshold of 10ha. The site accommodates a residential building and is surrounded by a mix of uses. The provision of additional residential development on site would not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural heritage or cultural heritage and the proposed development is not likely to have a significant effect on any European Site (as concluded below under section 8 of this report) and there is no hydrological connection present such as would give rise to significant impact on nearby watercourses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Dublin City Council, upon which its effects would be marginal.

5.4.3. Having regard to: -

- the nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001-2021;
- the location of the site on lands that are zoned as 'Z2 - Residential Neighbourhood (Conservation Areas)' providing for residential uses under the provisions of the Dublin City Development Plan 2016-2022, and the results of the strategic environmental assessment of the Dublin City Development Plan 2016-2022, undertaken in accordance with the SEA Directive (2001/42/EC);
- the location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity;
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001-2021;

- the guidance set out in the ‘Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development’, issued by the Department of the Environment, Heritage and Local Government (2003), and;
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001-2021;
- I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development would not be necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. In conjunction with the observations received by the Planning Authority during consideration of the application, the grounds of appeal from three residents of Montpelier Hill can be collectively summarised as follows:

Design and Scale

- the density, height and scale would be excessive for the site and represents an overdevelopment of the site;
- the 45% site coverage would materially contravene the standards of the Development Plan;
- references to building scale and height fail to acknowledge that the building is out of character with neighbouring buildings, including the two to three-storey housing in Dawson Place and the single-storey cottages along Montpelier Hill, and, as such, the proposals would introduce an incongruous structure into the cityscape;
- the proposed materials would not be in keeping with the character of the area and the proposals fail to comply with various objectives of the Development Plan;

- proposals would result in the loss of amenity, parking and recreational space for existing residents of Montpelier Square who have additional need for this area due to the shortfall in private amenity space provision for many of the apartments;
- the proposed and existing apartments would be served by overshadowed and an inadequate provision of communal amenity space;
- previous issues raised in the refusal of planning permission under DCC ref. 4440/19 have not been fully overcome in the subject proposals and the applicant should have stated that they intended to amend the proposals that were subject to retention under DCC ref.4179/18;
- the proposed mix of units would not add to the long-term family housing needed in this area and the apartments would not meet minimum floor area standards;

Residential Amenity

- the application was not accompanied by a daylight assessment and fails to recognise the loss of light and the overshadowing impact of the development for neighbouring residential properties;
- the adequacy of lighting for the proposed apartments and open space areas has not been provided;
- overbearing impacts would arise, alongside overlooking from windows and balconies to houses and their gardens with a resultant loss of privacy for neighbouring residents;
- disturbance, noise, dust, traffic congestion and other impacts would arise for neighbouring residents over the construction period, which would be for an extended period owing to the restricted undercroft access to the development area;

Traffic and Parking

- the absence of on-site car parking serving the existing and proposed development would add to ongoing parking problems;

- under DCC ref. 3194/97 the rear site area that would be subject of this development proposal was only intended to serve as parking for residents of Montpelier Square;
- proposals would add to ongoing traffic congestion problems along Montpelier Hill, particularly along the narrow single-carriageway stretch fronting the appeal site;
- a construction traffic management plan would be needed;
- there would be a shortfall in the provision and standard of cycle parking;

Other Matters

- there would be limited and inadequate provision of waste collection facilities relative to standards, as well as limited refuse vehicle access to serve the entire site;
- the potential for structural impacts on properties in Dawson Place needs to be considered;
- proposals would adversely impact on the biodiversity of gardens;
- several dimensions and details, including existing rear balconies, are omitted from the drawings, there are several inconsistencies in the drawing details and the contiguous elevation drawings are not at the correct scale;
- third parties should have been provided more time to appeal the Planning Authority's decision;
- the changes at further information stage were material and should have been re-advertised to allow third parties to comment on the revised proposals;
- there is a possibility of significant subsurface archaeological remains to be found;
- EIA screening, including consideration of the cumulative impact with the student accommodation, should have been carried out by the Planning Authority and their AA screening is not based on scientific data;
- proposals would add to existing capacity and odour issues relating to drainage services in the area.

6.2. Applicant's Response

6.2.1. The applicant's response to the grounds of appeal, which was accompanied by information and drawings addressing structural engineering matters, can be summarised as follows:

- at further information stage the development was reduced in density, height and scale, and the revised layout provided for an increased area of communal open space to serve the apartment complex;
- the building height would not be out of character with the existing prevailing heights, including Montpelier Square, Dawson Place and the adjacent student accommodation complex;
- the information submitted clarifies that the revised scheme would provide high-quality residential units and it would not result in a substantive loss of light or overlooking for neighbouring properties;
- engineering details appended to the response reveal that the works can be undertaken without adversely affecting the condition of adjoining boundaries;
- the absence of car parking would facilitate the open space and would be consistent with planning policy;
- an urban courtyard measuring approximately 244sq.m would be provided, whereas based on planning standards the overall Montpelier Square apartment development would attract a communal open space requirement measuring 144sq.m;
- the plot ratio and site coverage comply with the Development Plan standards;
- arising from the information submitted, the Engineering Department (Drainage Division) of the Planning Authority did not object to the development on drainage grounds;
- the Planning Authority were correct in asserting that the proposed development would not have a significant effect on the environment and that it would not require an EIA or an AA;

- the Planning Authority considered the application to comply with regulatory requirements and they did not consider the information submitted at further information stage to be significant.

6.3. Observations

6.3.1. Observations submitted in response to the grounds of appeal were received from two residents of Dawson Place and a resident of Montpelier Square. The observations primarily reiterate and support matters raised within the grounds of appeal, while also raising additional matters that can be summarised as follows:

- the proposals should be considered comprehensively with the existing development on site;
- lighting to apartments would be restricted by the slatted screen features;
- the failure of existing apartments to meet lighting standards does not justify support for the subject proposals;
- the south-facing balcony would directly overlook living room windows in the existing apartment block on site;
- a minimum of 10% public open space has not provided on site and the proposed private open space provision would be inadequate, therefore, the proposals represent a material contravention of Development Plan standards;
- the existing tenants of Montpelier Square have had various problems with their accommodation and ancillary services over the years;
- biodiversity proposals, the extent of floor area to be retained and proposals for a playground on site were omitted from the application;
- public consultation was not undertaken;
- engagement with the Planning Authority to reduce the scale of the development and provide additional waste storage is welcome.

6.4. Planning Authority Response

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

6.5. Further Submissions

6.5.1. The responses of an observer and two third-party appellants to the applicant's response to the grounds of appeal, primarily reiterate matters raised within their respective previous submissions, while also raising matters that can be summarised as follows:

- despite the revisions to the scheme, the proposed development would not address concerns raised and would continue to negatively impact on neighbouring residents, while providing an inadequate and substandard communal open space for the residents of Montpelier Square;
- there are several discrepancies in the sunlight and daylight assessment model used and the application of UK standards is not relevant to Ireland;
- there remains the potential for damage to neighbouring properties and the courtyard should be completed in accordance with the previous permission (DCC ref. 4179/18);
- traffic congestion would be problematic during the construction phase based on the situation arising during recent remedial works to Montpelier Square;
- substantive information to address concerns with regards to drainage have not been provided;
- climate change can no longer be ignored in the assessment of development proposals;
- many matters raised concern fundamental legal issues that cannot be ignored.

7.0 Assessment

7.1. Introduction

7.1.1. Revised drawings were submitted with the planning application, primarily addressing the scale and height of the proposed apartment building, while also addressing the impact on neighbouring properties. The applicant has not appealed the Planning Authority decision and it is these revised proposals that I consider in my

assessments below. I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Zoning Standards;
- Design and Visual Impact;
- Residential Development Standards;
- Impacts on Neighbouring Residents;
- Traffic and Parking;
- Other Matters.

7.2. Zoning Standards

- 7.2.1. The principle of developing the proposed apartments on a backland inner-urban site with a land-use zoning objective 'Z2 – Residential Neighbourhood (Conservation Areas)' is acceptable based on the land use zoning matrix within the Dublin City Development Plan 2016-2022 and also subject to planning and environmental considerations addressed below. The grounds of appeal assert that the proposed development would result in overdevelopment of the site and an excessive scale and density of development relative to the surrounding character. The proposed development would have a stated plot ratio of 1.4 and a stated site coverage of 45%, which is within the 0.5 to 2.0 indicative plot ratio range and meets the 45% indicative site coverage normally allowed for in the Development Plan on 'Z2' zoned lands.
- 7.2.2. Planning policy at national and regional levels seeks to encourage higher densities in appropriate locations. The National Planning Framework (NPF) seeks to deliver on compact urban growth and national policy objectives (NPOs) 13, 27, 33 and 35 of the NPF seek to prioritise the provision of new homes at locations that can support sustainable development, while seeking to increase densities in settlements through a range of measures. The Sustainable Residential Development in Urban Areas Guidelines (2009) promote minimum net densities of 50 units per hectare within 500m walking distance of bus stops and within 1km of light rail/rail stations. The Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020) (the 'New Apartment Guidelines') define locations in cities and towns that are suitable for increased densities, with a focus on the

accessibility of the site by public transport and proximity to city/town/local centres or employment locations. The New Apartment Guidelines state that 'central and / or accessible' urban locations are generally suitable for small to large-scale and higher-density development that may wholly comprise apartments. Policy SC13 of the Development Plan promotes residential densities that facilitate the creation of sustainable neighbourhoods and the Plan also encourages development at higher densities, especially in public transport catchments.

- 7.2.3. The proposed development would provide five additional apartments to the existing 19 apartments on a site measuring 755sq.m, thereby resulting in a residential density of 318 units per hectare. The application site is approximately 2km from Dublin city centre and a 300m walk from Dublin Bus and Luas light rail services, and I am satisfied that the site is within a 'Central and Accessible Urban Location' based on the definitions within the New Apartment Guidelines. The proposed density for the site complies with the Development Plan and Government policy seeking to increase densities and thereby deliver compact urban growth. Further consideration with respect to the scale and height of the development, as well as impacts on local amenities, is outlined below.

7.3. Design and Visual Impact

- 7.3.1. The grounds of appeal assert that the design, height and scale of the proposed development would not have sufficient regard and respect for the neighbouring pattern of development. In response, the applicant asserts that the revisions to the development that were undertaken at further information stage substantially reduced the height and scale of the proposed apartment building. Section 16.10.8 of the Development Plan lists a range of criteria to be considered in relation to residential development on backland sites, including the established pattern and character of development in the area.
- 7.3.2. In January 2020 the Planning Authority refused planning permission (DCC Ref. 4440/19) for a six-storey building containing 15 apartments on this site. In refusing permission, the Planning Authority highlighted concerns regarding the height, depth and scale of the building and its compatibility with the surrounding character.

- 7.3.3. The site features an existing four-storey apartment block. The historical urban grain in the immediate vicinity, largely comprising of housing on similar size plots fronting onto streets, has altered in recent years with the construction of developments in backland locations, such as the three to five-storey student residence, Highlight Parkgate, adjacent to the west of the site, and the two to three-storey terraced housing within Dawson Place to the north and east of the site. The rows of terraced buildings along Montpelier Hill to the front of the site vary from single to four storeys in height and substantially restrict views into the appeal site development area. Consequently, views of the proposed development would primarily be restricted to the site and the rear of immediately adjoining properties.
- 7.3.4. The revised proposed development would introduce a two to three-storey stepped apartment building at the rear of the site with a stated maximum height of 9.7m. In contrast to the previously refused apartment building (DCC Ref. 4440/19), the subject proposals, including flat roof with parapets, would not be higher than the prevailing building heights in the immediate vicinity, as illustrated in the 'extended elevation' drawing (no. LAP 1076-F12-402) submitted in response to the Planning Authority's further information request. The proposed apartment building would sit directly between the end-of-terrace house at no.6 Dawson Place and block A of the student residence and it would be positioned 5.4m to 15.3m from the existing apartment building on site. The applicant submitted a planning and design statement initially with the application setting out the primary rationale for the proposed design and site arrangement, based on the criteria contained within the Urban Design Manual – A Best Practice Guide 2009. A contemporary palette of materials is proposed with the central circulation core defined by a brick finish.
- 7.3.5. Considering the site context, I am satisfied that the proposed apartment building would not be highly visible in this location and it would have sufficient respect and regard for the established pattern and character of development in the area and on site. I acknowledge that the proposed building would enclose the space between nos.6 and 7 Dawson Place and would sit forward of the building line when viewed from Dawson Place to the east. Notwithstanding this, where visible it would sit amongst a collection of other buildings in the immediate backland area and the design is of a sufficiently high standard. The proposed apartment building to be introduced into this cityscape would not unduly impact on the architectural quality of

the area and it would not conflict with policy CHC4 of the Development Plan, which aims to protect the special interest and character of Dublin's conservation areas, including Z2 zoned lands. Accordingly, permission should not be refused for reasons relating to the design and visual impact of the proposed development.

7.4. Residential Development Standards

- 7.4.1. The grounds of appeal also refer to the impact of the building on the communal open space to serve the five one-bedroom apartments, as well as various concerns regarding the standard of the proposed accommodation. Based on the standards within the New Apartment Guidelines, the floor areas, room layouts and configurations, storage areas, floor to ceiling heights and private amenity space to serve the apartments, would meet or exceed the minimum standards and would, therefore, provide for a suitable and acceptable form of accommodation for future occupants of the apartments.
- 7.4.2. The New Apartment Guidelines state that levels of natural light in apartments is an important planning consideration and regard should be had to the BRE standards, while the Building Heights Guidelines require reasonable regard to these standards. The BRE standards state that numerical targets should be applied flexibly (specifically average daylight factor values of 1% to bedrooms, 1.5% to living rooms and 2% to kitchens) and that natural light is only one factor to be considered in layout design. As such, the BRE standards are discretionary and not a mandatory policy. While I acknowledge that the applicant has failed to carry out their own assessment of the numerical targets for daylight and sunlight in the proposed apartments, I am satisfied that considerations of daylight and sunlight have informed the proposed layout and design in terms of separation distances, scale and the aspect of units. The proposed development is at an appropriate scale relative to the two to five-storey height of surrounding properties, as well as the separation distances between the nearest buildings and the proposed windows, limiting the extent of natural lighting that would be restricted from entering the proposed apartments. All of the proposed apartments are dual aspect with floor to ceiling heights greater than the minimum standards, maximising available light and ventilation to each apartment. Based on the information available from the drawings, adequate allowance has been made in the proposed designs for daylight and

sunlight to the apartments and I am satisfied that the availability of daylight and sunlight to the apartments would be largely within acceptable ranges, therefore, the development has reasonable regard for the requirements under the Development Plan and section 28 guidance relating to sunlight and daylight.

7.4.3. The area subject of the proposed apartment building was previously granted retention permission for use as a landscaped amenity space to serve the existing apartments on site (DCC ref. 4179/18). The landscaping that was required to be undertaken as a condition of the retention permission does not appear to have been undertaken and only an informal amenity area is available for residents, which is understood to be frequently used for car parking. According to the applicant, the existing mix of 19 apartments on site comprises seven one-bedroom apartments and 12 two-bedroom apartments, while it is proposed to provide five one-bedroom apartments. Consequently, based on the standards contained within the New Apartment Guidelines and the Development Plan there would be a requirement for 144sq.m of communal open space to serve the development. While the applicant states that 244sq.m of communal open space would be available, the grounds of appeal refer to various features impeding and reducing the available communal amenity space. Notwithstanding that the stated 244sq.m of communal open space does not appear to account for the dual use of this area for pedestrian access, cycle parking and bin stores, I am satisfied that the resultant remaining provision would be larger than the relevant minimum communal open space required and, therefore, would be sufficient to serve the overall apartment development.

7.4.4. Concerns were also expressed in the grounds of appeal regarding the level of natural lighting to amenity areas. The New Apartment Guidelines require designers to ensure that the heights and orientation of adjoining blocks permit adequate levels of sunlight to reach communal amenity space throughout the year. The BRE guidance indicates that at least 50% of an amenity area should receive a minimum of two hours sunlight on the 21st day of March, which is the spring equinox. The applicant's 'Sunlight, Daylight and Shadow Assessment' report does not address the impact of sunlight to the proposed communal areas or the proposed private balconies and terraces. The proposed building would be directly north of the courtyard space that would serve as the main communal amenity space on site, therefore, while it would result in the loss of an area that was previously permitted as

communal space for residents, it is the existing apartment building that is likely to have the greatest impact on the lighting of this space, and the proposed building would have minimal impact in terms of overshadowing of this courtyard space. The depth of the courtyard space would measure between 5.4m and 15.3m, which I am satisfied would provide a reasonable unobstructed area to allow for direct filtration of sunlight to the communal open space having regard to the BRE standards.

Consequently, I am satisfied that the height and layout of the development would permit adequate levels of sunlight to reach the proposed communal amenity space throughout the year.

7.4.5. A mix of recessed north, west and south-facing terraces and balconies are proposed to serve as private amenity areas for the apartments. Several of the existing apartments on site are stated to not be served by private amenity space. The south-facing and west-facing upper-floor balconies serving three of the proposed apartments would be suitably orientated to avail of ample levels of lighting over the course of the day and throughout the year. While the north-facing terrace serving apartment 1 and the west-facing terrace serving apartment 2 would feature 1.6m-high timber-slat privacy screens, which would impact on the availability of light to their respective terrace areas, these terraces would adjoin a shared communal area to the rear of the site that would be easily accessible from each of the respective ground-floor apartments. Both of these terraces meet the area standards required in the New Apartment Guidelines and these Guidelines do not restrict the provision of north or west-facing private amenity spaces. Notwithstanding that there would be some impediments to the direct natural lighting of the ground-floor terraces by virtue of their orientation and screen features, this would not be uncommon in an inner-urban context and natural lighting is only one of many factors in site layout design. In conclusion, I am satisfied that the proposed apartments would each be served by a reasonable and appropriate provision of private amenity space with adequate access to light based on the relevant standards.

7.4.6. The grounds of appeal assert that the proposed development would not achieve the minimum required 10% of public open space on site and as such the proposed development would materially contravene the Development Plan. Some development sites are considered to be too small to accommodate public open space on site and in such situations the Development Plan allows for the provision of

public open space to be met via financial contributions in lieu of the shortfall. Given the site context proximate to extensive public open space within Phoenix Park and the Croppies, as well as the provision of the Development Plan and the limited area of the site, I am satisfied that the provision of public open space on site would not be necessary to serve the development and, subject to a condition addressing the shortfall via contributions, the absence of same would not result in the proposed development materially contravening the Development Plan.

- 7.4.7. Communal refuse collection for the existing and proposed development is proposed in two enclosed and covered areas within the shared courtyard space, in accordance with the requirements of the Planning Authority. The location for these bin stores would offer a suitable central and secure collection area for waste to serve the development and would be in compliance with the requirements outlined in the New Apartment Guidelines.
- 7.4.8. In conclusion, I am satisfied that the proposed development would provide an appropriate level of accommodation and amenity for future occupants of the proposed apartments, in line with the provisions outlined in the Development Plan and the New Apartments Guidelines, and permission for the proposed development should not be refused for this reason. Further consideration with respect to the impact of the proposed development on the existing apartments on site is undertaken below.

7.5. Impacts on Neighbouring Residents

- 7.5.1. When considering applications for development, including those comprising apartments, the Development Plan requires due consideration of proposals with respect to the potential for excessive overlooking, overshadowing and loss of sunlight or daylight. Submissions received from numerous third parties raise concerns in relation to the impact of the proposed development on existing gardens and houses, due to overshadowing and overbearing impacts, reduced sunlight and daylight and excessive overlooking resulting in a loss of privacy. To address the impacts of the development on neighbouring residential amenities, the Planning Authority requested revisions to the scheme, which the applicant responded to. Three potential development options amending the proposals were presented, and the final revised plans submitted at further information stage by the applicant were

selected as the other options were considered to impact on lighting to the rear of the site or were excessively overbearing.

- 7.5.2. The nearest residential buildings include no.7 Dawson Place adjoining to the north of the proposed building, no.6 Dawson Place adjoining to the east, Montpelier Square apartments to the south of the proposed building on the appeal site and the student residence adjoining to the west (block A). The houses backing onto and siding onto the site feature rear gardens with depths of approximately 7m to 8m. The proposed apartment block would be three-storeys adjoining house nos.6 and 7 and two-storeys adjoining block A of the student residence. A building setback distance of 3.4m to 5.1m would be maintained from the rear garden with no.6. The nearest apartment windows in the existing Montpelier Square apartments would be 10m to 14.4m from the directly-facing windows in the proposed apartment block.
- 7.5.3. The two-storey section of the proposed apartment block would have a stated roof parapet height of approximately +21.4m, which would be approximately 4.3m below the roof level of the adjoining student residence building and 3.4m below the roof ridge level of nos.7, 8 and 9 Dawson Place. The three-storey section of the proposed apartment block would have a stated roof parapet height of +24.23m, which would be approximately 0.7m below the roof ridge level of nos.7, 8 and 9 Dawson Place and approximately 2m above the roof ridge level of nos.4, 5 and 6 Dawson Place.

Overlooking and Loss of Privacy

- 7.5.4. In discussing standards with respect to houses, the Development Plan refers to the traditional separation distance of 22m between the rear of two-storey houses and provisions for this to be relaxed where it can be demonstrated that the development is designed in such a way as to preserve the amenities and privacy of adjacent occupiers. While not directly applicable in assessing new apartment developments, this traditional standard can be used as a guide in assessing the adequacy of the proposals with respect to the potential for excessive direct overlooking between the proposed apartments and the existing residences. With separation distances of 10m to 15m between the proposed apartment windows facing the rear windows to the existing apartment windows in Montpelier Square, the guide distance has not strictly been met. Notwithstanding this, I consider that in conjunction with the provision of a

communal courtyard space in the intervening area, as well as the limitation of direct overlooking by virtue of the existing 5m-deep projecting circulation cores to the rear of the existing apartments, a reasonable separation distance would be provided between the existing and proposed apartments and the potential for excessive direct overlooking would not arise.

- 7.5.5. A 3m-high masonry wall on the boundary with Dawson Place would be reinforced and maintained as part of the proposals and this would restrict overlooking from the ground-floor apartments to housing in Dawson Place and into the Highlight Parkgate student residence. With the exception of upper-floor views towards the rear of no.65 Montpelier Hill, the potential for overlooking of internal areas to housing in Dawson Place would not arise as there would be no proposed apartment windows or balconies directly facing windows in Dawson Place. The bedroom window to apartment 2 has been splayed towards block B of the student residence, in order to avoid direct overlooking to the rear garden of no.7 approximately 5.1m to the north. A separation distance of approximately 20m, which is 4m greater than that currently provided between nos.6 Dawson Place and no.65 Montpelier Hill, would be maintained between the rear of no.65 and the bedroom windows to apartments 4 and 5. While overlooking of rear garden areas would be potentially possible from the new apartments into neighbouring housing, this is typical of this inner-urban area and would not be substantially different than the present terraced housing arrangement. Consequently, I am satisfied that no additional measures would be required to reduce the potential for overlooking between the proposed and existing development and undue overlooking and excessive loss of privacy for residential properties would not arise.

Outlook and Overbearing Impacts

- 7.5.6. The proposed development would be visible from the private gardens and internal areas of the immediately adjacent houses to the north and east and to an extent it would partially change the outlook from these properties. I consider that the extent of visual change would be in character with the constantly evolving urban landscape and the existing scale of development in the area, including the backland student residence complex and terraced housing.

7.5.7. The proposed development does not exceed the prevailing building heights of the area and the building is modulated to step down from three to two storeys on its western side. Building height differences and separation distances to other buildings are detailed above. Perspective views 1 and 2 (drawing nos.LAP 1076 – F12-500 and 501) submitted by the applicant in response to the Planning Authority’s further information request, provide a reasonably accurate visual portrayal of the development in situ. I am satisfied that the proposed development would not be overly prominent when viewed from the nearest neighbouring residences. The modulated appearance of the block coupled with the setback distances achieved and the existing scale of backland development, is such that where visible from neighbouring properties the proposed development would not be excessively overbearing.

Impacts on Lighting

7.5.8. Third-party observers have raised concerns regarding the potential for the development to overshadow and result in excessive loss of light to neighbouring houses. In assessing the potential impact on light access to neighbouring properties, two primary considerations apply, including the excessive loss of daylight and light from the sky into houses through the main windows to living rooms, kitchens and bedrooms, and the excessive overshadowing of amenity areas to existing residences.

7.5.9. Section 3.2 of the Building Heights Guidelines state that the form, massing and height of a proposed development should be carefully modulated so as to maximise access to natural daylight, ventilation and views, and to 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 such as BRE 209 ‘Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice’ (2011) and 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 solution must be set out, in respect of which the Planning Authority or An Bord Pleanála should apply their discretion, having regard to local factors, including site specific constraints and the

balancing of that assessment against the desirability of achieving wider planning objectives.

7.5.10. I acknowledge that an updated BS EN 17037:2018 'Daylight in Buildings' guide replaced the BS 8206-2: 2008 (in the UK) in May 2019, however, I am satisfied that this updated guidance does not have a material bearing on the outcome of my assessment and that the relevant guidance documents remain those referenced in the Building Heights Guidelines (i.e. BRE 209 and BS 8206-2: 2008).

Light from the Sky and Sunlight

7.5.11. The applicant has provided a Sunlight, Daylight and Shadow Assessment report relying on the standards of the above referenced BRE 209 and BS 8206-2 documents, and this report provides an assessment of the effect of the proposed development on the vertical sky component (VSC) and annual probable sunlight hours (APSH) achievable at neighbouring windows, as well as the effect on sunlight to gardens.

7.5.12. When considering the impact on existing buildings, criteria are set out in figure 20 of the Guidelines and further summarised as follows:

- if the separation distance is greater than three times the height of the proposed building above the centre of the main window, then the loss of light would be minimal. Should a lesser separation distance be proposed, further assessment would be required;
- if the proposed development subtends an angle greater than 25° to the horizontal when measured from the centre line of the lowest window to a main living room, then further assessment would be required;
- if the VSC would be greater than 27% for any main window, enough skylight should still be reaching this window and any reduction below this level should be kept to a minimum;
- if the VSC with the development in place is less than 0.8 of the previous value, occupants would notice a reduction in the amount of skylight;
- in the room impacted, should the area of the working plane that can see the sky be less than 0.8 the previous value, then daylighting is likely to be

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

- 7.5.13. The tests above are a general guide only and the BRE guidance states that they need to be applied flexibly and sensibly with figures and targets intended to aid designers in achieving maximum sunlight and daylight for residents and to mitigate the worst of the potential impacts for existing residents. It is clear that the guidance recognises that there may be situations where reasonable judgement and balance needs to be undertaken cognisant of circumstances. To this end, I have used the Guidance documents referred to in the Ministerial Guidelines to assist me in identifying where potential issues and impacts may arise and also to consider whether such potential impacts are reasonable, having regard to the need for increased densities within zoned, serviced and accessible sites and the need to address impacts on existing residents in as much as is reasonable and practical.
- 7.5.14. Separation distances from existing houses to the proposed blocks would be less than three times the height of the new building above the centre of the main windows, therefore, based on the BRE guidance a more detailed daylight assessment is required. The baseline and proposed VSC was calculated in the submitted report for windows on the rear elevation to Montpelier Square, on the east side upper-floor elevations to the student residence (blocks A and B) and on the rear elevations of nos.5, 6, 7 and 8 Dawson Place and nos.65 and 67 Montpelier Hill. I am satisfied that the VSC assessment has been targeted to neighbouring windows, rooms and houses that have greatest potential to be impacted and would be representative of the worst-case scenario. With the exception of two windows on the ground-floor of Montpelier Square, the level of change in proposed VSC is estimated as being within the recommended limit of 0.8 of the previous value. The applicant asserts that the marginal failure (0.68 and 0.75) of two tested windows is exacerbated by the low baseline VSC for these windows and the improved landscaping of the rear area to the complex would ameliorate for the minor loss of skylight.
- 7.5.15. As part of the VSC study and in accordance with the assessment criteria within the BRE guidance, the applicant has also calculated the effect on the APSH for the test windows that feature aspect other than from the north. The BRE guidance state that

in order for a proposed development to have a noticeable effect on the APSH of an existing window, the following would need to occur:

- the APSH value drops below the annual (25%) or winter (5%) guidelines and;
- the APSH value is less than 0.8 times the baseline value and;
- there is a reduction of more than 4% to the annual APSH.

7.5.16. The applicant's report indicates that with the exception of the ground-floor windows to nos.7 and 8 Dawson Place, the APSH value for all windows tested would not fall below the stated target value of 25% (annual) or 5% (winter), therefore a noticeable effect for the residents of the majority of the properties tested would not arise. For the two ground-floor windows failing step 1 in the test, when their baseline APSH is compared with the APSH for development in place, the ratio of change would be 0.93 and 0.89 for the annual baseline situation and would be 0.31 and 0.53 for the winter baseline situation. The applicant asserts that further testing of these windows in line with the BRE guidance highlighted that no more than a 4% reduction in the annual APSH in respect of the tested windows would arise, therefore, all windows tested comply with the quantitative guidance.

7.5.17. Only a small proportion of the tested windows would be affected in a noticeable manner by the proposed development and the loss of light would be only marginally outside the ratio of proposed VSC to baseline VSC provided for in the guidelines. The change would appear to be exacerbated by the existing low baseline VSC conditions for two windows. The annual APSH for the ground-floor windows serving nos.7 and 8 Dawson Place would be within the BRE guidance allowance. Arising from the predominance of compliance with BRE guidance standards, I am satisfied that the impacts of the proposed development on lighting to neighbouring residences would not be sufficiently adverse to require amendments to the proposed development, particularly having regard to the flexibility afforded in the BRE 209 and BS 8206-2 guidance and the discretion offered by section 3.2 of the Building Heights Guidelines and section 6.6 of the New Apartments Guidelines. Accordingly, a refusal of permission or modifications to the proposed development for reasons relating to lighting to neighbouring properties would not be warranted.

Loss of Sunlight and Overshadowing

- 7.5.18. Concerns were expressed by neighbouring residents regarding the potential loss of light to rear gardens. The applicant's Sunlight and Daylight Assessment report provides an assessment of the effect of the proposed development on sunlight levels to the adjoining amenity space within the student residence complex and the rear gardens of nos.5, 6, 7 and 8 Dawson Place, and nos.65 and 67 Montpelier Hill. As stated above, the BRE guidance indicates that any loss of sunlight as a result of a new development should not be greater than 0.8 times its previous value and that at least 50% of an amenity area should receive a minimum of two hours sunlight on the 21st day of March.
- 7.5.19. A sunlight assessment was undertaken using a 3D model of the development and the adjoining buildings with the results shown in tabular and graphical format in the applicant's report. The analysis of the six private gardens and amenity areas reveals that with the proposed development in place, between 0% and 42% of the amenity and rear garden areas would receive at least two hours of sunlight on the 21st day of March. With the exception of the rear garden to no.7, the level of change in the receipt of sunlight to these gardens from the baseline scenario compared to the proposed scenario was calculated as being between the ratio of 0.98 and 1.0 and, therefore, well within the acceptable BRE guidance for these amenity areas. The level of change in the receipt of sunlight to the rear garden to no.7 from the baseline scenario compared to the proposed scenario was calculated as being 0.33 for the month of March, however, when testing was undertaken for this garden over the course of the year, other than for the months of March and September the level of change was calculated as being between 0.94 and 1.0 and, therefore, according to the applicant an anomaly was considered to have arisen. The graphical view provided in the applicant's report would suggest very limited change in levels of sunlight to no.7 and other gardens arising from the proposed development and the tabulated data for the entire year would suggest very limited impact on the rear garden of no.7 with the exception of anomalies relating to the months of March and September only. Consequently, I am satisfied that the level of change in sunlight and overshadowing to neighbouring amenity areas would comply with the BRE guidance and a refusal of planning permission for reasons relating to the loss of sunlight and overshadowing to neighbouring properties would not be warranted.

Construction Impacts

- 7.5.20. The grounds of appeal assert that the proposed development would impact on the structural integrity of neighbouring properties. In this regard I note that the applicant has responded by submitting structural engineering details for the project. I am satisfied that that appropriate levels of certainty as to proposed construction methodology is provided, as well as precautionary mitigation if required during construction, which would be sufficient to obviate potential impacts to neighbours. Concerns were also raised regarding emissions during the construction phase, the need to restrict construction hours and the control of overspill construction-related parking in neighbouring areas. As per the request of the Planning Authority, a construction management plan can be agreed in the event of permission, and I am satisfied that with finalisation of and adherence to such a plan, as well as the control of construction hours, this would ensure the management of demolition and construction activity is carried out in a planned, structured and considerate manner that minimises the impacts of the temporary works on local residents and properties in the vicinity. I address the construction traffic impacts further below.

Conclusions

- 7.5.21. Having regard to the assessments and conclusions set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the enjoyment or value of property in the vicinity. The proposed development should not be refused permission for reasons relating to impacts on the amenities of neighbouring residents.

7.6. Traffic and Parking

- 7.6.1. The grounds of appeal assert that the proposed development would further impact on parking and traffic congestion experienced in the area. The applicant submitted a Traffic Report with the application clarifying the existing transport context and the construction-related traffic impacts for the development. To the front of the site there is on-street 'pay and display' parking available on the north side of Montpelier Hill, while there is a double-yellow line on the southern side of this road. The proposed apartments would only be served by the existing pedestrian access off Montpelier Hill and off-street parking is not proposed. The proposed development would not

impact on the existing road layout, including on-street parking. The site is a 300m walk from the Museum Luas stop, as well as various Dublin Bus and Dublin bike services, and I consider this location to be capable of absorbing a reduced parking quantum for the proposed development, as facilitated within the Development Plan. While I recognise that the apartments would to some extent attract additional traffic to the area, this would be largely imperceptible and would not lead to concerns regarding traffic safety or convenience.

7.6.2. The Transportation Planning Division of the Planning Authority did not object to the proposals, subject to several conditions, including the need for a mobility management plan to be submitted and implemented as part of the development. A total of eight cycle parking spaces are proposed within the courtyard space, which the Planning Authority consider to be acceptable. This proposed cycle parking provision would only appear to serve the proposed apartments and cycle parking for the existing apartments on site has not been detailed. Based on the New Apartment Guidelines and the stated unit mix, a total of 36 cycle parking spaces would be required to serve the proposed and existing apartments, exclusive of visitor spaces. Given the absence of details of parking to serve the entire apartment complex and as access to sustainable transport modes is a central theme of the New Apartment Guidelines, the overall provision of cycle parking to serve the development should be increased to accord with the standards contained in the New Apartment Guidelines. There would be sufficient space within the courtyard for secure cycle parking facilities to serve the Montpelier Square development to be provided, while ensuring adequate communal open space would also remain, and this should be sought as a condition in the event of a permission for the development.

7.6.3. The applicant has submitted construction traffic management details as part of their Traffic Report indicating likely traffic volumes, delivery routes and measures to address traffic and parking during the nine to 12-month construction phase. The Planning Authority has requested that a Construction Management Plan with traffic management details is submitted for agreement prior to the commencement of the development and I am satisfied that this would be necessary and reasonable as a condition in the event of a permission for the proposed development. While disturbance is an inevitable and typical consequence of any development and there would be likely to be some disruption for local residents and occupants during the

construction period, this would only be for a temporary period and would be mitigated through measures in the construction management plan.

- 7.6.4. In conclusion, subject to conditions, the proposed development would not result in traffic hazard or significant additional traffic congestion in the area, and it would feature an appropriate provision of cycle parking.

7.7. Other Matters

Services

- 7.7.1. The application was accompanied by a Civil Utilities Planning Report addressing site services, including foul sewers, surface water drainage, water supply and lighting. Sustainable Urban Drainage Systems (SUDS) measures would be incorporated into the development to provide interception storage, including an underground attenuation tank and a flow control to limit the rate of discharge to below greenfield run-off rates, and considerably less than the existing unattenuated discharge rates. The proposed attenuation tank would have sufficient capacity to accommodate 1-in-100 year storm events and climate change factors have been factored into the detailed design. A hydrobrake would be installed to the system prior to the discharge of storm waters to the existing combined sewer system running along Montpelier Hill in a 300mm-diameter vitrified clay pipe. It is also proposed to discharge the foul water effluent from the proposed development at a single connection point and by gravity in a southern direction into the combined sewer. In order to supply water to the development, it is proposed to connect into a 180mm-diameter medium density polyethylene watermain running along Montpelier Hill. Irish Water did not respond during consultation and the Planning Authority confirmed the acceptability of the drainage proposals, subject to conditions to agree the final detailed designs and to comply with the Greater Dublin Regional Code of Practice for Drainage Works (Version 6.0). In conclusion, I consider the drainage proposals to serve the development are satisfactory, subject to appropriate conditions.

Documentation and Consultation

- 7.7.2. Concerns have been expressed in the grounds of appeal regarding the absence of consultation and the validity of the planning application. As part of this assessment I have had due regard to all submissions received in considering the acceptability or

otherwise of the various aspects of the proposals and based on the information available public participation would appear to have been facilitated in line with the regulatory requirements. The documentation on the file was considered valid by the Planning Authority and I am satisfied that sufficiently precise information has been provided with the application and appeal to allow a comprehensive and thorough assessment of the adequacy of the proposals and the impacts of the proposals on neighbouring residential amenities, as well as the wider area.

Archaeology

- 7.7.3. The grounds of appeal refer to the potential for subsurface archaeology to be found on site. While an archaeological assessment report was not submitted with the application, I am satisfied that based on the present condition of the site and immediate area, the absence of same would not give rise to a situation that would preclude the granting of permission. The Planning Authority has requested that a condition is attached requiring archaeological monitoring to be undertaken during the construction phase. Given the potential for unknown archaeological features to survive on site, such a condition would appear reasonable and necessary to attach.

8.0 Appropriate Assessment

8.1. Stage 1 – Screening

- 8.1.1. A report screening for Appropriate Assessment was not submitted with the planning application. The grounds of appeal assert that Appropriate Assessment would be required and the Planning Authority do not consider this to be necessary.

8.2. Relevant European Sites

- 8.2.1. The nearest European sites are listed in section 5.3 of this report. Qualifying interests and conservation objectives for each of the sites are listed on the National Parks and Wildlife Services (NPWS) website (www.npws.ie).

8.3. Is the Project necessary to the Management of European sites?

- 8.3.1. The project is not necessary to the management of a European site.

8.4. Direct, Indirect or Secondary Impacts

8.4.1. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works and which could have a negative effect on the qualifying interests of European sites, include the following:

- impacts on water quality, for example via release of suspended solids, accidental spills or the release of contaminants from made ground during construction;
- loss or disturbance of habitat/species, for example, use of the appeal site by qualifying species.

8.5. Potential Effects

8.5.1. Based on the source-pathway-receptor model, the nearest pathway to designated sites from the appeal site is the River Liffey, which is 115m to the south of the appeal site, flowing in an easterly direction into Dublin Bay. The site is currently occupied by a residential building and contains no substantive features of ecological significance, with very limited vegetation existing on the site.

8.5.2. Surface water from the site would be discharged at rates compliant with the Greater Dublin Regional Code of Practice for Drainage Works to the public surface water drainage system. All foul water from the proposed development would be discharged via the public system to the Ringsend Waste Water Treatment Plant (WWTP). Permission has recently been granted (ABP-301798-18) for works that would increase the capacity of the plant from a population equivalent of 1.9 million to 2.4 million.

8.5.3. Having regard to the above, the urban context and the residential nature of the proposed development, I consider that the only potential pathways between the appeal site (source) and the European sites (receptors) would relate to drainage during construction and operation. Due to the nature of the application site and the proposed development there is no direct pathway to a European site, however there is a potential indirect pathway to coastal SACs and SPAs via surface and foul drainage networks and Ringsend WWTP.

- 8.5.4. Accordingly, with the exception of the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), the South Dublin Bay SAC (Site Code: 000210), the North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000206), I am satisfied that the other European sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on these European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the appeal site. The conservation objectives for the four above named coastal sites are appended to this report. The conservation objectives largely relate to water-dependent habitats and species, including coastal and inter-tidal habitats and migratory wintering birds.
- 8.5.5. There is theoretically an indirect hydrological pathway between the application site and the four named coastal sites via the public drainage system and the Ringsend WWTP, where wastewater from the proposed development would be treated. However, I am satisfied that the distances are such that any pollutants post treatment from the Ringsend WWTP would be minimal and would be diluted and dispersed and, therefore, there is no likelihood that pollutants arising from the proposed development either during construction or operation could reach the designated sites in sufficient concentrations to have any likely significant effects on the designated sites in view of their qualifying interests and conservation objectives.

8.6. In-combination Impacts

- 8.6.1. I am satisfied that likely significant in-combination impacts would not arise.

8.7. Stage 1 – Screening Conclusion

- 8.7.1. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out Screening for Appropriate Assessment, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), the South Dublin Bay SAC (Site Code: 000210), the North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000206),

or any other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment and the submission of a Natura Impact Statement is not therefore required.

- 8.7.2. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Sites.

9.0 Recommendation

- 9.1. Following the assessments above, I recommend that planning permission for the proposed development should be granted, subject to conditions, for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the zoning for the site, to the nature and scale of the proposed development, and to the existing pattern of development in the vicinity, it is considered that subject to compliance with the conditions below, the proposed development would respect the character and quality of existing development within the area, would be acceptable in terms of visual impact, would not seriously injure the residential amenities of the area or of property in the vicinity, would provide a suitable level of amenity for future occupants in accordance with the provisions of the Dublin City Development Plan 2016-2022 and the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020) prepared by the Department of Housing, Local Government and Heritage, and would be acceptable in terms of traffic safety and convenience. 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, as amended by the further plans and particulars submitted to the Planning Authority on the 23rd day of

April 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. A total of 36 secure and sheltered bicycle parking spaces shall be provided within the site to serve the existing and proposed apartments. The layout and demarcation of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development on this site, in the interest of sustainable transportation.

3. Each apartment shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.

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

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

Reason: In the interest of visual amenity.

5. No additional development shall take place above roof parapet level, 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 amenity of property in the vicinity and the visual amenity of the area.

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

Reason: In the interest of public health.

7. 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 to ensure a satisfactory standard of development.

8. Prior to the occupation of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents in the development on site. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport.

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

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

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

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

11. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide, inter alia, details and location of the proposed construction compound(s), details of intended construction practice for the development, including hours of working, noise and dust management measures, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste.

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

12. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays 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.

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

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

14. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) 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,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

- 15.** Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

- 16.** Prior to the commencement of development, the developer shall enter into an agreement with the Planning Authority to provide for the payment of a financial contribution to the Planning Authority in lieu of the on-site shortfall in public open space, as provided for under section 16.3.4 of the Dublin City Development Plan 2016-2022. The manner of payment and amount of payment shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

17. 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.

Colm McLoughlin
Senior Planning Inspector

10th November 2021