



An  
Bord  
Pleanála

## **S. 6(7) of Planning and Development (Housing) and Residential Tenancies Act 2016**

### **Inspector's Report on Recommended Opinion ABP-310738-21**

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#### **Strategic Housing Development**

Mixed-use development consisting of co-working office floorspace, 11 no. live-work units and 146 no. Build-to-Rent (BTR) residential units, with associated resident support facilities, services and amenities and associated site works.

#### **Location**

Cody's Yard, Ossory Road, North Strand, Dublin 3.

#### **Planning Authority**

Dublin City Council

#### **Prospective Applicant**

E to Infinity ICAV acting on behalf of its sub-fund Blacklion Real Estate Fund.

#### **Date of Consultation Meeting**

21/09/2021

#### **Date of Site Inspection**

15/09/2021

#### **Inspector**

Conor McGrath

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## **1.0 Introduction**

Having regard to the consultation that has taken place in relation to the proposed development and also having regard to the submissions from the planning authority, the purpose of this report is to form a recommended opinion as to whether the documentation submitted with the consultation request under section 5(5) of the Planning and Development (Housing) and Residential Tenancies Act 2016 - (i) constitutes a reasonable basis for an application under section 4, or (ii) requires further consideration and amendment in order to constitute a reasonable basis for an application under section 4.

## **2.0 Site Location and Description**

- 2.1. This roughly triangular site comprises an area of 0.51ha, located at Ossary Road, North Strand, Dublin 3. The site is bounded on three sides by railway lines; to the north west by the main, elevated Dart / Dublin-Belfast rail line, and to the east and south west by rail lines running into Dublin Port. Ossory Road bounds the site to the southeast and connects to West Road / East Wall, under the adjoining railway. Ossory Road is elevated to the southwest and falls approx. 4m to the north along the site boundary. The main Dart line to the northwest and the railway to the northeast are indicated to be elevated approx. 6m over ground levels on the site, while the railway to the southwest, is approx. 1m below existing levels on the site. An existing residential and office development, Crosbie's Yard bounds the site to the southwest. Development in the East Wall and North Strand areas otherwise comprising modest, two-storey terraced housing.

## **3.0 Proposed Strategic Housing Development**

The proposed development comprises the construction of a part 6 to part 11 storey mixed use building (lower ground to ninth floor levels), including co-working office floorspace, 11 no. live-work units and 146 no. Build-to-Rent (BTR) apartments and associated resident support facilities, services and amenities, as follows:

- 146 no. BTR apartments comprising 36 no. studio units, 67 no. 1 bedroom units and 43 no. 2 bedroom units.
- 11 no. live-work units provided at second floor level.
- Ancillary resident support facilities, services and amenities with a reception/lobby area and communal amenity areas at lower ground floor level (1,064-sq.m.) consisting of a communal café and resident's co-working area, gym, laundry, storage areas, residential concierge and management office.
- External communal open space areas at podium, sixth and ninth floor level.
- Balconies / private amenity space for 136 no. BTR units and 11 no. live-work units.
- 41 no. car parking spaces, 240 no. bicycle parking spaces, 3 no. motorcycle spaces, plant rooms and a bin storage area at lower ground floor level, 10 no. bicycle parking spaces are also provided at surface level; and
- Vehicular, pedestrian and cycle access from Ossory Road, foul and surface water drainage, boundary treatments, hard and soft landscaping, an ESB sub-station, and all ancillary site development works necessary to facilitate the development.

Building heights generally step down from 11-storeys at the southwestern site boundary to 7-storeys, including lower ground floor level, to the northeast.

Development parameters:

<b>Site Area</b>	<b>0.51ha</b>
<b>No. of units</b>	146 no. BTR apartments
<b>Density</b>	286 / ha
<b>Plot Ratio</b>	2.17
<b>Site Coverage</b>	69%
<b>Other Uses</b>	Co-working space 610-sq.m. 11 no. live-work units 640-sq.m. Meeting rooms 97-sq.m.

<b>Dual aspect</b>	58 no. / 39%
<b>Communal amenity space</b>	2,539-sq.m. at podium, sixth and ninth floors.
<b>Public open space</b>	none
<b>Resident support facilities</b>	1,064 sq.m, consisting of communal café and resident's co-working area, laundry, gym, storage, residential concierge and management office  No Childcare facility is proposed.
<b>Car Parking</b>	41 no. spaces at lower ground level (0.29 / unit) incl. Live work units.
<b>Bike parking</b>	240 spaces at lwr gr and 10 surface spaces

<b>Unit Type</b>	<b>No. of Units</b>
<b>Studio</b>	36
<b>1 bed</b>	67
<b>2 bed</b>	43
<b>Live Work unit</b>	11

#### 4.0 Relevant Planning History

##### **PA Ref. 2219/09    ABP Ref. PL 29N.233488**

Permission refused on appeal for a mixed use 5 storey over basement development, comprising offices, incubator units and warehouses, following the planning authority's decision to refuse permission. The reason for refusal was as follows:

It is an objective of Transport 21 and the Dublin City Development Plan, 2005-2011 to enhance capacity on existing lines and services and to provide new infrastructure including an interconnected route linking Heuston Station to Spencer Dock. Having regard to the identified need to secure the site for the purposes of the proposed DART Underground scheme, it is considered that the

proposed development would prejudice the implementation of the scheme, a nationally important infrastructure and would, therefore, be contrary to the proper planning and sustainable development of the area.

#### **Adjacent development – Crosbies Yard.**

**PA Ref.: 3227/02:** Permission granted in January 2003 for an employment and residential development comprising 194 no. apartments, 2,142 sqm of incubator office space / enterprise units and 400sqm gym and laundry, in 1 no. five storey and 3 no. six storey buildings.

**PA ref. 5830/04:** Permission granted in June 2005 for revisions to ref. 3227/02, comprising change of use of 2nd and 3rd floor levels in Block C from office to 8 no. one bed live/work units

There have been other amending applications on these lands. The applicants note that the office element of the scheme, adjacent to the application, has not been occupied since construction.

#### **Other Z6 lands:**

**PA Ref. 3091/20 ABP Ref.: 309938-21:** A decision to grant permission at the junction of East Wall Road and Alfie Byrne Road, 400m from the subject site, is current under appeal, for development for a mixed-use development comprising hotel, offices and 88 no. BTR apartments, and associated uses.

**ABP Ref. ABP-310609-21:** Current SHD application at Tolka Industrial Park, Ballyboggan Road, Dublin 11, for development comprising 142 No. apartments with ancillary residents' amenity/work hub and a commercial unit.

A decision is due on the SHD application on the 12th October 2021.

## **5.0 Section 247 Consultation(s) with Planning Authority**

- 5.1. Application documentation refers to S.247 consultations with the planning authority on 5<sup>th</sup> April 2018, 4<sup>th</sup> December 2018 and 1<sup>st</sup> April 2021.

Initial design proposals comprised a hotel / aparthotel development, which was later revised to a Build-to-Rent development and includes co-working space and live-work units to address the requirements of the Z6 zoning objective. Matters discussed in consultations with the planning authority are identified as follows:

- Lands use zoning.
- Proximity of residential unit to railway.
- Building height and impacts on its surroundings.
- Public open space.
- Daylight and sunlight.
- Dual aspect provision.
- Dwelling mix.
- Amenity space provision for BTR accommodation.

The application also notes that discussions have been held with Irish Rail and Irish Water.

## **6.0 Planning Policy**

### **6.1. National and Regional Planning Policy**

#### **6.1.1. Project Ireland 2040 - National Planning Framework**

National Strategic Outcome 1 is identified as Compact Growth, recognising the need to deliver a greater proportion of residential development within existing built-up areas. Activating these strategic areas and achieving effective density and consolidation, rather than sprawl of urban development, is a top priority.

Objective 3A seeks the delivery of at least 40% of all new housing in existing built-up areas of cities, towns and villages on infill and/or brownfield sites.

Objective 11 favours development within existing cities, towns and villages, subject to appropriate planning standards and achieving targeted growth

Objective 13 provides that, in urban areas, planning and related standards will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth.

Objective 33 prioritises the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

#### **6.1.2. Rebuilding Ireland – Action Plan for Housing and Homelessness 2016**

Pillar 4: Improve the Rental Sector. The key objective is addressing obstacles to greater private rented sector delivery and improving the supply of units at affordable rents.

Key actions include encouraging “build to rent”. Build-to-rent developments are designed with the occupants in mind – this might be equal sized bedrooms clustered around a central shared space, or the inclusion of amenities such as gyms and crèches and shared entertainment facilities.

#### **6.1.3. Regional Spatial and Economic Strategy for the Eastern and Midland Region**

RPO 4.3 supports “the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built-up area of Dublin City and suburbs.”

Section 5.3 identifies guiding principles for development of the metropolitan area, which include: Compact sustainable growth and accelerated housing delivery – To promote sustainable consolidated growth of the Metropolitan Area, including brownfield and infill development, to achieve a target to 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs. To support a steady supply of sites and to accelerate housing supply, in order to achieve higher densities in urban built up areas, supported by improved services and public transport.

Section 9.2 notes that changing household formation trends will require a range of housing typologies. Section 9.3, Housing and Regeneration, notes that recent trends in the delivery of specialised housing typologies such as build to let developments and shared accommodation is indicative of the change in approach necessary to accommodate changing demand and demographics in the Region.

#### **6.1.4. Housing for All - A New Housing Plan for Ireland (Sept 2021)**



The stated aim is to provide access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life. The plan identifies the need for construction of an average of 33,000 homes per annum nationally until 2030 to meet the targets outlined in the National Planning Framework. Four overarching objectives are identified:

- Supporting Homeownership and Increasing Affordability.
- Eradicating Homelessness, Increasing Social Housing Delivery and Supporting Social Inclusion.
- Increasing New Housing Supply; and
- Addressing Vacancy and Efficient Use of Existing Stock.

The Pathway to Increasing New Housing Supply includes a focus on the adequate supply of serviced zoned lands to meet housing need, at required densities.

## **6.2. S.28 Ministerial Guidelines**

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority and observers, I am of the opinion that the directly relevant section 28 Ministerial Guidelines are:

- Urban Development and Building Heights, Guidelines for Planning Authorities
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), and the accompanying Urban Design Manual
- Design Manual for Urban Roads and Streets (DMURS)
- The Planning System and Flood Risk Management (including the associated 'Technical Appendices') (2009)

## **6.3. Local Planning Policy – Dublin City Development Plan 2016 - 2022**

The subject site is primarily zoned 'Objective Z6 – Employment and Enterprise: 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'

Z6 lands constitute an important land bank for employment use in the city, which is strategically important to protect. The primary objective is to facilitate long-term economic development in the city region.

The permissible uses will be accommodated in primarily office-based industry and business technology parks. A range of other uses including residential, local support businesses, are open for consideration on lands zoned Z6 but are seen as subsidiary to their primary use as employment zones. The incorporation of other uses, such as residential, recreation, and retail uses, will be at an appropriate ratio where they are subsidiary to the main employment generating uses and shall not conflict with the primary land-use zoning objective, nor with the vitality and viability of nearby district centres.

Within the Z6 zoning, the following development principles shall apply, in addition to complying with land-use zoning:

- **Employment:** To create dynamic and sustainable employment areas. Any redevelopment proposals should ensure that the employment element should be in excess of that on site prior to re-development in terms of the numbers employed and/or floor space.
- **Uses:** To incorporate mixed uses in appropriate ratios. All such uses, including residential and retail, shall be subsidiary to employment-generating uses and shall not conflict with the primary aim of the Z6 land-use zoning to provide for the employment requirements of the city.
- **Transport:** To maximise access to public transport connections and proposed public transport infrastructure.
- **Built Environment:** To create a distinct identity for individual areas with a high-quality, physical environment and coherent urban structure.
- **Landscape:** To exploit and integrate natural amenities, biodiversity considerations and emerging strategic green networks

SDRA 6 Docklands (SDZ and Wider Docklands Area): The SDR) provides for the continued physical and social regeneration of this part of the city, consolidating the area as a vibrant economic, cultural and amenity quarter of the city, whilst also nurturing sustainable neighbourhoods and communities. Social sustainability is a key

strand of the development plan core strategy and is central to the regeneration strategy for the Docklands area. Fostering community integration between existing and emerging communities is also a key aspect to social sustainability in Docklands.

Chapter 5 sets out policies for quality housing.

QH5 promotes residential development through active land management and a co-ordinated planned approach to developing appropriately zoned lands including regeneration areas, vacant and under-utilised sites.

QH6 encourages attractive mixed-use sustainable neighbourhoods which contain a variety of housing types and tenures.

QH8 promotes the sustainable development of vacant or under-utilised infill sites and higher density proposals which respect the surrounding area.

QH17 supports the provision of purpose-built, managed high-quality private rented accommodation with a long-term horizon.

Policy MT4: To promote and facilitate the provision of Metro, all heavy elements of the DART Expansion Programme including DART Underground (rail interconnector), the electrification of existing lines, the expansion of Luas, and improvements to the bus network in order to achieve strategic transport objectives.

MT22: To require the submission of a Development Assessment for all development proposals located in the vicinity of both Dublin Port Tunnel, the proposed DART Underground protected corridor, or any proposed public transport tunnel. Detailed requirements for Dublin Port Tunnel are set out in Appendix 6, and Iarnród Éireann should be consulted in relation to heavy rail.

Chapter 16 deals with Development Standards: Design, Layout, Mix of Uses and Sustainable Design.

Section 16.5 describes plot ratio as a tool to help control the bulk and mass of buildings. It can determine the maximum building floor area or volume, but on their own cannot determine built form. Plot ratio standards need to be used in conjunction

with other development control measures, including site coverage, building height, public and private open space. Indicative plot ratios are identified, including a ratio of 2.0 – 3.0 for zone Z6. The plan notes that a higher plot ratio may be permitted in identified circumstances. Indicative site coverage values of 60% for Z6 lands.

Section 16.7.2 sets a general building height limit of 28m commercial or 24m residential in this inner-city area. All proposals for mid-rise and taller buildings must have regard to the identified criteria for high buildings

Section 16.10 deals with Standards for Residential Accommodation. Proposed developments shall be guided by the principles of Site Layout Planning for Daylight and Sunlight, A Guide to Good Practice (Building Research Establishment Report).

#### Appendix 21 Definition of land uses

Live-work units are commercial units designed to accommodate a residential element, such as an apartment. Live-work units are used for business/enterprise to provide for the following uses: office, medical and related consultants, data processing, software development, media-associated uses, publishing and film production, artists' and crafts studios, home-based economic activity and creative industries.

## 7.0 Submissions Received

Irish Water: A Confirmation of Feasibility issued to the applicants in 2019. This stated that an important 600mm Ø sewer traverses the site and that agreement on required separation distances would be required. No agreement has been reached since. Given the lapse of time and until a solution has been agreed with Irish Water, feasibility of infrastructure to serve the development cannot be confirmed.

## **8.0 Forming the Opinion**

Pursuant to section 6(7) of the Act of 2016, regard is had in the forming of the opinion to the documentation submitted by the prospective applicant; the planning authority submission and the discussions which took place during the tripartite consultation meeting.

### **8.1. Documentation Submitted**

The prospective applicant has submitted information pursuant to section 5(5)(a) of the Planning & Development (Housing) and Residential Tenancies Act 2016 and Article 285 of the Planning and Development (Strategic Housing Development) Regulations 2017. This includes the information and documentation listed in Appendix 1.

Section 5(5)(b) of the Act of 2016 requires the submission of a statement that, in the prospective applicant's opinion, the proposal is consistent with both the relevant objectives of the development plan or local area plan concerned, and relevant guidelines issued by the Minister under section 28 of the Act of 2000. Section 5(6) requires that where the proposed development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the statement provided for the purposes of subsection (5)(b)(i) shall indicate why, in the prospective applicant's opinion, permission should nonetheless be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.

Statements required under S.5(5) and 5(6) above have been submitted in this regard and I have considered all of the documentation submitted by the prospective applicant, relating to this case.

#### **8.1.1. Statement of Consistency**

The statement considers the following national, regional and local policy documents

- National Planning Framework, Project Ireland 2040;

- Regional Spatial and Economic Strategy for the Eastern and Midland Regional Authority 2019
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018)
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020)
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas - Cities, Towns and Villages (2009)
- Childcare Facilities, Guidelines for Planning Authorities, (2001)
- Design Manual for Urban Roads and Streets (2013)
- Urban Design Manual - a Best Practice Guide (2009)
- Sustainable Residential Development in Urban Areas - Cities, Towns & Villages (2009)
- The Planning System and Flood Risk Management Guidelines, (2009).
- Dublin City Development Plan 2016-2022

The statement considers consistency with the planning policy framework under the following headings, and includes the points set out below:

- Principle of Development
  - Compliance with Apartment Guidelines 2020
  - Relevant Development Management Criteria
  - Residential Density
  - Building Height and Scale
  - Impact on Adjoining Amenities
  - Traffic and Transport
  - Childcare Facilities
  - Water and Drainage
- The statement notes that the proposed uses can be considered subject to compliance with the current Z6 zoning.

- A separate Z6 Consistency Statement notes the proposed mix of uses, the adjoining Z6 zoned lands, the fact the site has no current employment use, and the potential for future additional employment development on adjacent Z6 zoned lands to satisfy the employment and enterprise objective for the area.
- Total employment within the development is projected to be c. 110 persons. The estimated ratio of employment to residential ranges from 35% employees to 65% residents, to 23% employee to 77% residents.
- The provision of 146 no. residential units is ancillary to the primary use of the wider Z6 area and the development will facilitate employment creation (above current levels on the site).
- This is argued to be acceptable having regard to the wider Z6 zoned lands, of which the site constitutes only 13%.
- The redevelopment is argued to be in accordance with CEE15 for this SDRA regeneration area, whilst providing a viable quantum of employment floorspace for the wider area and for future residents of the scheme.
- Due to the infill nature of the subject site it is not possible to provide public open space and a financial contribution in lieu is proposed.
- The development complies with national policy promoting increased densities, heights and urban consolidation.
- The proposed Build to Rent accommodation is consistent with Pillar 3 and 4 of Rebuilding Ireland – Action Plan for Housing and Homelessness.
- The Housing Quality Assessment (HQA) demonstrates compliance with the relevant SPPR's and standards required under the 2020 Apartment Guidelines. SPPR 1 (unit mix), SPPR 3 (Minimum floor areas) and SPPR 6 are noted not to apply to BTR schemes.
- The development complies with development plan policies and objectives for quality housing and the development management standards.
- The development materially contravenes the building height provisions of the development plan. A material contravention statement addresses SPPR 3 of the Building Height Guidelines.
- The location within an existing built-up area well served by public transport is suitable for increased building heights and for higher densities.

- The Board have consistently granted permission under the SHD process for densities significantly in excess of the minimum 50 units / ha, as per the Sustainable Residential Guidelines (2009)
- The Building Height Guidelines take precedence over development plan policies
- The proposed heights are appropriate, and similar heights and densities have been permitted in a range of sites in the city on *Central and or accessible locations*.
- Neighbouring properties generally will not be materially impacted due to the separation distances. The Daylight / Sunlight assessment demonstrates that there will be no significant additional impacts on neighbours.
- The Traffic and Transport Report concludes that detrimental effects on the surrounding road network are unlikely.
- Studio and 1 bed apartments can be discounted from the childcare requirements. The remaining 43 no. 2 bed units fall below the threshold of 75 no. units and no childcare facilities are proposed.
- Existing childcare provision in the area will have sufficient capacity to accommodate the low level of demand arising from this Build to Rent facility.
- The engineering report demonstrates how the development will be served by water and drainage infrastructure.

#### 8.1.2. **Material Contravention Statement**

The material contravention statement addresses potential contravention of the building height provisions of section 16.7.2 of the city development plan. The statement notes the following points:

- Proposed building heights are a maximum height of 30.7 m above street level.
- The development plan identifies a building height restriction of up to 28m for commercial or 24m for residential development for this location.
- The height provisions of the City Development Plan are superseded by Section 3 of the Building Height Guidelines 2018.
- Regard is had to the development plan development management criteria for the assessment of high buildings.



- The proposals accord with Policy SC17 and Section 16.7.2 in terms of protecting and enhancing the skyline of the inner city, and ensuring proposals make a positive contribution to the urban character of the city.
- SDRA 6 for the docklands area is focused on physical and social regeneration, consolidating the area as a vibrant economic, cultural and amenity quarter, whilst nurturing sustainable neighbourhoods and communities.
- The development is justified under Section 37(2)(b)(iii) of the 2000 Act as follows:
- The proposed heights are justified in the context of policy published since adoption of the city development plan.
  - The development accords with the National Planning Framework which seeks to increase densities and building heights in appropriate locations to consolidate urban development, increase the sustainability of public transport networks and meet housing needs.
  - General restrictions on building height should be replaced by performance-based criteria appropriate to general locations.
  - The RSES promotes the consolidation and re-intensification of infill, brownfield sites, along public transport corridors, to provide high density and people intensive uses within the existing built-up area.
  - Redevelopment of this underutilised urban brownfield site, close to high quality public transport will deliver on key policies and objectives of the RSES.
- The site constitutes a 'central and / or accessible urban location' as defined within the Apartment Design Guidelines, suitable for higher density apartment development and increased building heights.
- The Building Heights Guidelines note that implementation of the NPF requires increased density, scale and height in our town and city cores, including an appropriate mix of living, working, social and recreational space.
- Reuse of brownfield development sites is promoted.
- The site is an appropriate location for increased building heights in accordance with SPPR1.
- The development complies with the criteria under section 3.2 and permission may therefore be granted in accordance with SPPR 3.

### **At the scale of the City / town**

- This Central and Accessible Urban Location is well served by high capacity, frequent public transport.
- This is not an architecturally sensitive area. This high-quality development of a greater height and density will not impact on existing architectural sensitivities.
- The TVIA states that impacts on the Royal Canal and Tolka River Conservation Areas will range from imperceptible to slight and neutral.
- The wider North Docklands area is undergoing redevelopment and regeneration and is an evolving townscape. Existing and permitted heights in this area vary from the two storey dwellings to medium and high-rise buildings.
- The scale of development integrates appropriately with its surrounding and defines a strong urban edge to Ossory Road and enhance the public realm.
- Heights reduce to the north in deference to adjoining residential development.
- The scheme provides for a strong sense of place and a comfortable and inviting public realm, with high quality public and communal landscaped areas.
- Views towards the site will also be improved, removing the existing unsightly vacant nature of the site. A Visual Impact Assessment has been prepared.
- The scheme complements existing urban form and successfully introduces a high-quality element of architecture, making optimal use of the infill site.
- The new public plaza at the entrance will enhance permeability in the area.
- The mix of uses will animate the streetscape, opening up a previous enclosed and unwelcoming view space.

### **Scale of District / Neighbourhood / Street**

- Passive surveillance of the public pathway will improve integration and reduce the visual dominance of the railway line.
- A well-considered built form, improved streetscape and a greater sense of place will positively contribute to the local townscape character.
- The development responds appropriately to the massing and scale of the surrounding area.
- The development will enhance the appearance of the site, integrating with the existing context and enhance the urban realm through high quality landscaping and commercial uses which are accessible to the public.

- The development will create a focal point at this location and add to the vitality and viability of this inner-city site creating frontage to Ossory Road
- Setbacks from neighbouring buildings to negate any negative daylight and sunlight impacts.
- Building facades are articulated as strata and vertical bays to reduce massing.
- Quality materials relate to the location and neighbouring properties.
- The additional height makes optimal use of an underutilised area of infill brownfield land which benefits from a strategic location.
- The ground floor courtyard and podium courtyard will function as a managed public open space.
- A SSFRA is submitted.
- The development will benefit from the site's accessibility and will also attract footfall and increase pedestrian movement and activity in the area.

#### **Scale of the Site / Building**

- The separation distance and transition in building heights do not result in significant impact on nearby properties in terms of visual or residential amenity.
- The development will enhance the quality and visual amenity of the area.
- Separation distances and design avoid issues of overlooking and overbearing and result in an appropriate re-use of a zoned, brownfield site.
- Sunlight / Daylight Analysis and Shadow Analysis have been carried

The statement notes that the application is accompanied by the following specific assessments:

- A Wind Microclimate Assessment
- An AA Screening Report and Ecological Statement
- EIA Screening Report
- A Utilities Report which considers impacts on telecommunications links.
- Design Statement
- Photomontage Brochure
- Landscape Report
- Townscape and Visual Impact Assessment

The statement concludes that the proposed building heights meet the development management criteria under SPPR 3 of the Guidelines and therefore the Board can approve the proposed development under Section 28 (1C) of the Planning and Development Act 2000 (as amended).

## **8.2. Planning Authority Submission**

A submission from Dublin City Council was received by An Bord Pleanála on 29<sup>th</sup> July 2021 in accordance with Section 6(4)(b) of the 2016 Act. The submission includes a statement of the planning authority's opinion, details of S.247 meetings held with the prospective applicants and details of relevant applications in the area. The submission is also accompanied by copies of internal technical reports on the proposed development.

The report containing the opinion of the planning authority makes the following points:

### **Principle of Development**

- Within the Z6 zone, residential use is open for consideration and live/work units are permissible in principle.
- The proposal is not fully compliant with the zoning objective. It appears to be residentially led with ancillary employment rather than the other way around.
- Whilst the site will occupy 13% of the total Z6 landholding at Ossory Road, it is the ratios on the subject site itself which are of concern.
- The applicant should consider an increase in employment uses on the site.
- The development is broadly in accordance with the overarching principles and objectives for the SDRA 6, wider regeneration area.

### **Site Layout, Scale and Design**

- The proposal responds reasonably well to the constraints of the site.
- The layout locates sensitive uses close to the adjacent train tracks, a significant noise source, and pushes development closer to surrounding development in the area which for the most part, is of a much lower scale.
- The railway tracks provide separation from adjoining residential areas.

- There are concerns regarding the visual impact on surrounding roads, particularly Stoney Road and West Road, areas characterised low rise developments.
- Concerns are identified in respect of the design and daylighting of certain private amenity spaces and bedrooms.
- Studio and live/work units #121, 210, 321, 421 & 522 would benefit from a gable ended window to the bedroom areas.
- The Daylight/Sunlight assessment should consider lower floors.
- Clarification is required regarding the impact of acoustic screening along the northwestern boundary on light penetration.
- The Daylight/Sunlight assessment concluded that a number of apartments did not meet the recommended ADF for living rooms until such time as the area within the winter garden was included in the calculations.
- The Live/Work unit at number 208 should incorporate own door access.

Density, Plot Ratio and Site Coverage:

- A higher plot ratio is acceptable and there is no objection in principle to the proposed density of the site.

Building Height and Massing.

- An assessment of the proposal against criteria set out in section 3.2 of the building height guidelines is undertaken.

At the scale of the relevant city or town.

- The site is well served by public transport including train and bus services close to the city centre, and is suitable for a high densities.
- The character of this area is not architecturally sensitive or well defined.
- Given the site's isolation and the scale of surrounding development, integration into the surrounding environment is imperative but problematic.
- There are concerns regarding the visual impact when viewed from surrounding. Additional photomontage views should be provided.
- The site is not of a sufficient size to accommodate a new defined area nor deliver new streets and public spaces.

At the scale of the district, neighbourhood and street

- There are concerns regarding the scale of the development and visual impact.
- The materials specification is of a generally high quality.
- When viewed in combination with Crosbie's Yard, the developments result in a significant expanse of built form, detrimental to the character of the area.
- The isolation of the site limits its ability to enhance connectivity while its size which would struggle to contribute to meaningful placemaking.
- The Parks Department have requested that 10% of the site is provided as public open space as this is an area with a deficiency of public open space.
- The incorporation of more employment uses would be preferable.

At the scale of the site or building:

- The results of the daylight and sunlight assessment are noted.
- The Planning Authority is satisfied with this approach used to assess impacts on Crosbie's Yard. Uses on that site should be confirmed.
- Assessment of lower-level accommodation is required.
- All of the combined living/kitchen areas for each apartment should meet the minimum value of 2% ADF without reliance on external Winter Gardens.
- Given low light penetration to the courtyard, access to roof space for affected residents should be considered.
- A microclimatic assessment is not required.
- The potential for bird collision is a concern.

Residential Quality, Mix

- The is aware of their Part V obligations pertaining to this site.
- The number of one bedroom and studio units is a concern and a more diverse unit mix should be incorporated
- The Daylight/Sunlight Assessment should confirm that single aspect, north west facing units receive adequate levels of daylight.
- Clarify the number of units with no private balcony / amenity space.
- New build development should provide all units with private amenity space.
- Communal open space and children's play provision is acceptable.
- No objection to the lack of childcare facilities in this case.
- The design and size of proposed Live-Work units is welcome.

## Parking

- The car parking ratio of 0.28 outside the canal cordon is a concern.
- A car park management plan is required.
- The quantum of cycle parking proposed is acceptable. Dedicated parking for other uses proposed on the site should be provided.
- The 10 surface level spaces to the rear of the site should be relocated.
- Additional security measures for cycle parking are required

## Landscaping and Open space

- Additional communal open space at roof level should be considered.
- The applicant should explore the inclusion of public open space within the site.
- Further detail regarding the provision of private, communal and public open space is required.
- An updated community audit should address the adequacy of facilities in the area.

The Planning Authority considers that the following details should be addressed in any application:

- Consider additional employment uses on the site.
- Provide additional photomontage images.
- Clarify the design at ground floor/podium level open space.
- Further articulation of the facades to ensure the blocks appear adequately separated visually, and not appear overly horizontal.
- Consider a more diverse unit mix.
- Broaden the scope of the Daylight and Sunlight Analysis report.
- The potential impact of the acoustic screening to north western facing Winter Gardens on daylight should be clarified.
- Combined living/kitchen areas should meet the minimum value of 2% ADF and not rely on the external Winter Garden areas to achieve the minimum values.
- Clarification regarding the design and provision private amenity spaces.
- The design of Live/Work units should incorporate own door access.
- Incorporate gable windows to enhance daylight to identified units.
- Potential risk and impact of bird collision should be assessed and mitigated.

- An updated Community & Social Infrastructure Audit should be provided.

Reports from other City Council Departments, are appended:

- Transportation Planning Division
- Parks and Landscape Services Division
- Drainage Division
- Housing
- Environmental Health
- Waste

In addition to the above points, I note the following additional points from these reports:

Transportation Planning:

- No details of any improved junction design have been provided.
- The applicant should liaise with Iarnród Éireann.
- There are concerns regarding access and egress movements for large trucks.

Parks and Landscape Services

- Control measures for Japanese Knotweed on the site should be advanced.

Drainage:

- Revised proposals for the diversion of the public surface water sewer are required.
- The minimum clearance of 3m between sewers and all structures on site, including basement and foundations, shall be increased.
- A surface water management strategy shall be submitted
- A revised Flood Risk Assessment is required.

Air Quality Monitoring and Noise Control Section

- A Construction Management Plan must be submitted.

Archaeology

- The site should be subjected to predevelopment strategic archaeological testing in order to assess the nature of archaeological deposits.



### 8.3. The Consultation Meeting

A Section 5 Consultation meeting was held on 22nd September 2021, commencing at 2.30pm, via Microsoft Teams. I refer to the record of the meeting in respect thereof. Representatives of the prospective applicant, the planning authority and An Bord Pleanála were in attendance. An agenda was issued by An Bord Pleanála prior to the meeting and the main topics raised for discussion at the tripartite meeting were as follows:

1. Compliance with Development Plan zoning objective, Z6
2. Design Strategy
3. Residential amenity:      Amenity Space  
                                      Noise  
                                      Daylight and sunlight
4. Access and transport
5. Water, drainage infrastructure and flooding
6. AOB

Both the prospective applicant and the planning authority were given an opportunity to comment and respond to the issues raised by the representatives of ABP. Those comments and responses are recorded in the 'Record of Meeting ABP-310738-21' which is on file. I have fully considered the responses and comments of the prospective applicant and planning authority in preparing the Recommended Opinion hereunder.

In relation to compliance with Development Plan zoning objective, Z6, An Bord Pleanála sought further elaboration and clarification in respect of the following matters:

- The requirements of the development plan with regard to the mix of uses on these lands.
- The extent of Z6 zoned lands in the applicant's control / ownership and the existing mix of uses within this area.
- The precedent for residential development on similarly zoned lands.

In relation to the Design Strategy, An Bord Pleanála sought clarification and further elaboration and justification for the development in respect of the following matters:

- Clarity on the building heights proposed.
- The design and building height strategy and response to concerns regarding impacts on visual amenity raised in the submission of the planning authority.
- Clarity in relation to ground floor accommodation and proposals for under-croft areas at podium level.
- Clarity regarding residential access and circulation.
- The design approach for proposed live-work units.
- Clarification regarding potential material contravention of policies and objectives of the Dublin City Development Plan 2016.

In relation to Residential Amenity, An Bord Pleanála sought further elaboration and justification for the development in respect of the following matters:

#### Amenity Space

- The quality and value of proposed amenity spaces, particularly the courtyard space, having regard its and layout design and reported environmental conditions.
- Review of the issues raised in the submission of Dublin City Council in relation to the design and quality of private residential amenity spaces.
- Compliance with development plan requirements with regard to public open space.

#### Noise

- The existing noise environment and the frequency and nature of operations on the adjoining rail lines.
- The influence of the noise environment on the design process and the layout and orientation of residential development on the site.
- The materials specification considered in the Acoustic Design Statement.
- Measures for the mitigation of noise impacts on proposed apartments.
- The noise environment in the northern communal open space.

#### Daylight and sunlight

- The potential impacts of the development on the surrounding area.

- The quality of daylighting to proposed apartments and the role of any compensatory measures where dwelling units do not achieve the identified reference values.
- The role of winter gardens in terms of residential amenity and contribution to internal daylighting.

In relation to Access and Transport, An Bord Pleanála sought further clarification and elaboration in relation to the development in respect of the following matters:

- The status of the Dart Underground Project and any previous restrictions on the development of this site arising from the Rail Order / CPO process.
- Details of the proposed access arrangements from Ossory Road and requirements for consent of DCC to works on the public road.

In relation to Water, drainage infrastructure and flooding, An Bord Pleanála sought further clarification and justification for the development in respect of the following matters:

- The status of discussions and proposals for the diversion of the existing surface water and foul sewers crossing the site.
- The implications for the development of such diversion works including requirements in terms of building set-back and landscaping.
- Response to the comments of DCC in respect of the SSFRA.

## 9.0 Conclusion and Recommendation

Based on the entirety of the information before me, it would appear that the proposed development falls within the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

I have examined all of the information and submissions before me including the documentation submitted by the prospective applicant, the submissions of the planning authority and the discussions which took place at the tripartite meeting. I

have had regard to both national policy, via the s.28 Ministerial Guidelines, and local policy, via the statutory plan for the area.

Having regard to all of the above, I recommend that further consideration and/or possible amendment of the documents submitted are required at application stage in respect of the following elements, details of which are set out in the Recommended Opinion below.

- i. Compliance with the land use zoning objectives of the Dublin City Development Plan 2016
- ii. Amendments to the documentation to ensure consistency in the uses and accommodation proposed.
- iii. Detailed design proposals for the entrance to the site from Ossory Road.
- iv. Details regarding the diversion of existing foul and surface water sewers crossing the site.

Having regard to the above, I recommend that the Board serve a notice on the prospective applicant, pursuant to Section 6(7)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016, stating that it is of the opinion that the documentation submitted with the consultation request under section 5(5) of the Act **requires further consideration and amendment** in order to constitute a reasonable basis for an application under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

I would also recommend that the prospective applicant be notified, pursuant to article 285(5)(b) of the 2017 Regulations, that specified information (as outlined hereunder) be submitted with any application for permission that may follow. I believe the specified information will assist the Board at application stage in its decision making process. I am also recommending that a number of prescribed bodies (as listed hereunder) be notified by the prospective applicant of the making of the application.”

## 10.0 Recommended Opinion

An Bord Pleanála refers to your request pursuant to section 5 of the Planning and Development (Housing) and Residential Tenancies Act 2016. Section 6(7)(a) of the Act provides that the Board shall form an opinion as to whether the documents submitted with the consultation request (i) constitute a reasonable basis for an application under section 4 of the Act, or (ii) require further consideration and amendment in order to constitute a reasonable basis for an application under section 4.

Following consideration of the issues raised during the consultation process and having regard to the opinion of the planning authority, An Bord Pleanála is of the opinion that the documentation submitted **requires further consideration and amendment to constitute a reasonable basis for an application for strategic housing development to An Bord Pleanála.**

In the opinion of An Bord Pleanála, the following issues need to be addressed in the documents submitted to which section 5(5) of the Act of 2016 relates that could result in them constituting a reasonable basis for an application for strategic housing development:

1. A detailed statement of consistency and planning rationale, clearly outlining how in the prospective applicant's opinion, the proposed development is in compliance with local planning policies having specific regard to the zoning objective of the site as "Z6" – 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'.

Justification for the principle of this primarily residential development on lands zoned Z6 should have regard to the specific policies of the Development Plan which state, inter alia, that

*"A range of other uses including residential, local support businesses, are open for consideration on lands zoned Z6 but are seen as subsidiary to their primary use as employment zones. The incorporation of other uses, such as residential, recreation, and retail uses, will be at an appropriate ratio where*

*they are subsidiary to the main employment generating uses and shall not conflict with the primary land-use zoning objective, ...”*

Any consideration given to the wider Z6 lands in such statement, should acknowledge and have regard to the full range of existing uses thereon, including existing residential uses.

2. Further consideration of, and possible amendment to the drawings and design proposals to provide clarity and consistency with regard to the proposed accommodation and uses at ground floor level including the status of undercroft / “cut out” areas within the courtyard. The final design proposals in this regard should be reflected in all drawings and associated documentation accompanying the application, including inter alia, landscape design proposals, the Acoustic Design Statement, the Microclimatic Wind Analysis and the Sunlight, Daylight & Shadow Assessment.

This may require possible amendment to the documents and/or design proposals submitted.

3. Further consideration of, and possible amendment to the documents submitted, to provide full and detailed design proposals in respect of access arrangements from Ossory Road. Such proposals should provide for safe vehicular, pedestrian and cycle access to the site and demonstrate that conflicting movements do not arise at this junction.

This may require possible amendment to the documents and/or design proposals submitted.

4. Further consideration of, and possible amendment to the documents submitted in respect of the treatment and proposed diversion of the existing Irish Water foul sewer and Dublin City Council surface water sewer traversing the site. The application should demonstrate that any necessary way leave and associated maintenance requirements are provided for within the development, including any required building set-back or revised landscaping arrangements.

This may require possible amendment to the documents and/or design proposals submitted.

Pursuant to article 285(5)(b) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant is hereby notified that, in addition to the requirements as specified in articles 297 and 298 of the Planning and Development (Strategic Housing Development) Regulations 2017, the following specific information should be submitted with any application for permission:

1. Response to the previous decision to refuse planning permission on this site under PA ref. 2219/09, ABP Ref. PL 29N.233488 and confirmation that there is no longer a requirement to secure / protect the site for the purposes of the proposed DART Underground scheme. The status of the Rail Order and any associated CPO relating to these lands should be clearly addressed.
2. Section drawings and associated imagery clearly illustrating the relationship between the proposed development and Ossory Road. The proposed boundary treatment to Ossory Road should provide for transparency and facilitate supervision of the public road and footpath from within the development.
3. The Microclimatic Wind Analysis and Pedestrian Comfort study accompanying the application should address the safety and comfort of residential amenity spaces, including communal roof terraces and private upper floor balconies, both within the site and on adjoining lands. Any required mitigation or other design measures arising from such assessment should be clearly detailed and assessed in the study.
4. A report that specifically addresses the proposed materials and finishes to the scheme including specific detailing of finishes, landscaping and paving, pathways, entrances and boundary treatments. Particular regard should be had to the requirement to provide high quality, durable and sustainable finishes which have regard to the context of the site.

5. Details of measures in respect of the public open space requirements of the Dublin City Development Plan 2016.
6. A report demonstrating how the development will deliver communal residential open spaces of high quality and usability, including the northerly open space at ground floor level, having regard to climatic factors, including the wind and noise environment and access to sunlight.
7. Landscaping proposals including an overall landscape masterplan for the development site including detail of tree planting, the quantity, type and location of all proposed hard and soft landscaping including details of public lighting, pedestrian entrances and boundary treatments. Detail shall include a rationale for the planting / vegetation selected having regard to the daylight and sunlight characteristics of differing areas of the site.
8. The Acoustic Design Statement should set out the recommended mitigation measures in order that they can be clearly related and assigned to each façade / individual dwelling unit within the development. The statement should also confirm that the application of the identified mitigation measures achieves compliance with identified reference values within dwelling units and private amenity spaces. The statement should also confirm that the materials and form of construction proposed as part of the application have been considered.
9. A Building Lifecycle Report in accordance with section 6.13 of the guidelines should also be submitted and shall detail the appropriate use of external materials on all elevations. This shall take account of any requirements arising from the mitigation measures identified in the Acoustic Design Statement, including proposed ventilation systems. The plan shall also address the management and maintenance of public spaces and access to the development.
10. The application should be accompanied by the following:



- i. A Traffic Impact Assessment, a preliminary Construction Traffic Management Plan and a Mobility Management Plan.
  - ii. A quality audit in accordance with Annex 4 of DMURS, including a road Safety Audit.
  - iii. A rationale for the quantum of car parking proposed on the site having regard to the provisions of the SPPR8 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, in respect of Build-to-Rent developments. A Car Park Management Strategy Plan should be provided in in this regard.
  - iv. An operational service management plan for the development, having specific regard to the uses proposed therein.
11. Proposals for the management and operation of the development as a 'Build-to-Rent' scheme in accordance with Specific Planning Policy Requirement (SPPR) 7 of the Guidelines on Design Standards for New Apartments, including detailed proposals for the provision and management of support facilities, services and amenities for residents. Proposals should clearly identify those communal facilities, services and amenities whose use is intended for residents only, and differentiate from other public / employment areas.

Management proposals should include the proposed live-work units and ensure that their design and operation will not impact on the wider residential amenities of the development. Such management proposals should also ensure that each live-work unit will be retained in single tenancy / occupancy and not sub-divided.

12. A comprehensive daylight and sunlight assessment examining the proposed dwelling units and amenity / open spaces, as well as potential impacts on daylight and sunlight to adjoining properties. In preparing such assessment regard should be had to the provisions of section 3.2 of the Urban Development and Building Heights Guidelines for Planning Authorities (2018) and to the approach 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'.

The assessment should provide a comprehensive view of the performance of the entire development in respect of daylight provision, including accommodation at ground and first floor levels. Where any alternative, compensatory design solutions in respect of daylight are proposed, these should be clearly identified and their effect appropriately described and / or quantified.

The assessment should also have regard to any potential impacts on daylight and sunlight arising from the noise mitigation measures proposed elsewhere in the application.

13. Have regard to the issues raised in the report of the planning authority (Dublin City Council) in relation to residential amenity and the design of private open space.
14. Measures for the control of invasive species and remediation of the site, as identified in the Ecological Impact Assessment Report, should be described, having regard to legislative requirements, including inter alia the 2011 European Communities (Birds and Natural Habitats) Regulations.
15. Address the issues and recommendations set out in the internal departmental reports of Dublin City Council, including, inter alia,
  - Engineering Dept – Drainage report dated 27/07/2021
  - Transportation Planning Division report dated 22/07/2021 and the
  - Archaeology Section report, dated 22/07/2021
16. The information referred to in article 299B(1)(b)(ii)(II) and article 299B(1)(c) of the Planning and Development Regulations 2001-2018 unless it is proposed to submit an EIAR at application stage.

Pursuant to article 285(5)(a) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant is informed that the following authorities should be notified in the event of the making of an application

arising from this notification in accordance with section 8(1)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016:

1. Córas Iompair Éireann
2. Commission for Railway Regulation
3. NTA
4. TII
5. Irish Rail
6. Dublin City Council Childcare Committee
7. Irish Water

**PLEASE NOTE:**

Under section 6(9) of the Planning and Development (Housing) and Residential Tenancies Act 2016, neither the holding of a consultation under section 6, nor the forming of an opinion under that section, shall prejudice the performance by the Board, or the planning authority or authorities in whose area the proposed strategic housing development would be situated, of any other of their respective functions under the Planning and Development Acts 2000 to 2016 or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

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Conor McGrath  
Planning Inspector

24/09/2021

**Appendix 1: Documentation accompanying the pre-application consultation request:**

- Completed Application Form (including EFT payment receipt, COF letter from Irish Water, BTR draft legal covenant)
- Statement of Consistency / Planning Report
- Z6 Consistency Statement.
- Statement of Material Contravention
- Part V pack - floorplans and schedule of areas, estimate of costs and validation letter from DCC Housing Section A full set of architectural, landscape and
- Architectural Drawings, schedule of areas and drawing issue sheet
- Architectural Design Statement;
- Housing Quality Assessment;
- Building Life Cycle Report;
- Landscape Drawings
- Landscape Development Report
- Townscape & Visual Impact Assessment
- Engineering Services Report
- A Site-Specific Flood Risk Assessment,
- Engineering drawings and drawing schedule
- Outline Construction Management Plan
- Traffic and Transport Report
- Residential Travel Plan
- DMURS statement of consistency
- Wind Analysis and Pedestrian Comfort Report
- Energy Analysis Report
- Utilities Report
- Site Lighting Report, drawings and drawing schedule
- Commercial Viability Assessment
- Acoustic Design Statement
- Façade System Selection Report
- Photomontage Brochure
- Sunlight, Daylight and Shadow Assessment
- Technical note on Operational Waste Management Plan
- Archaeological Assessment
- Appropriate Assessment Screening Report
- EIA Screening Report
- Ecological Impact Assessment
- Statement in accordance with Article 299B(1)(b)(ii)(II)(C) of the Planning and Development Regulations 2001, as amended,
- Build to Rent Operational Management Plan