



An
Bord
Pleanála

Inspector's Report ABP 310947-21

Development	Demolition of two storey building and construction of 5 storey apartment building with 38 build to rent units.
Location	153-155 Harold's Cross Road, Dublin 6W.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2712/21
Applicant	Red Rock Harold's X Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellant	Red Rock Harold's X Ltd.
Observer(s)	1. Sean Flanagan 2. Department of Education
Date of Site Inspection	10/02/22
Inspector	Pauline Fitzpatrick

1.0 Introduction

This is the second application and appeal for an apartment scheme on the site. Permission was previously refused on appeal under ref. ABP 307208-20 (2172/20).

2.0 Site Location and Description

The site is largely as described on the previous appeal and is as follows:

- 2.1.1. The subject site is located approximately 2.5km to the south of Dublin City Centre and on the eastern side of Harold's Cross Road. The site lies adjacent to two and three storey dwellings to the north. Peggy Kelly's Pub lies immediately to the south of the subject site with outdoor seating/patio area separating the two buildings. The pub rises from single storey to two storey with DSIX Off Licence to the south rising to three storeys. The houses further south are two and three storeys. The apartment scheme on the grounds of St. Clare's Convent further north of the subject site has recently been completed.
- 2.1.2. The former Harold's Cross Greyhound Stadium bounds the site to the rear (east). This site is earmarked for the development of an educational campus with an appeal with the Board for same under ref. ABP 311174-21. Access to the stadium is located immediately to the north of the existing building on the site. The three-storey house to the other side of the access is boarded up and unoccupied. Harold's Cross Park lies across the public road to the west of the site.

The existing building on the site comprises a garage / car showroom which is a flat roofed, two storey structure to the elevation onto Harold's Cross Road, while the rear of the building is single storey in scale. The building occupies the full extent of the development site. The site has a stated area of 0.0752ha with the stated floor area of the existing building to be demolished being 853.86m²

3.0 Proposed Development

The application was lodged with the planning authority on the 04/05/21 and entails:

- Demolition of existing garage and showroom

- Construct 5 storey build to rent apartment development comprising of 38 no. units as follows:
 - 29 no. 1 bedroom
 - 3 no. two bedroom
 - 6 no. studio
- Open space is by way of a terrace at 4th floor level and a ground floor courtyard with an overall stated area of 124 sq.m.
- Communal amenity facilities include concierge, business lounge, games room and cinema room.

The application is accompanied by:

- Planning Report
- Architectural Design Statement
- Townscape and Visual Impact Assessment
- Photomontages
- Daylight and Sunlight Assessment Report
- Landscape Plan
- Traffic and Transportation Statement
- Building Life Cycle Report
- Operational Management Plan
- Outline Traffic Management Plan
- Outline Construction Management Plan
- Engineering Infrastructure Report
- Archaeological Impact Assessment
- Screening for Appropriate Assessment

4.0 Planning Authority Decision

4.1. Decision

Refuse permission for the above described development for 4 reasons which can be summarised as follows:

1. Having regard to the design, scale, mass and bulk and its proximity to adjoining properties the proposal would constitute overdevelopment of the site and would have an excessively overbearing, overshadowing and overlooking effect. It fails to integrate or be compatible with the design and scale of adjoining buildings, would seriously injure the visual amenities of the streetscape and would have an adverse impact on the character of the area.
2. Number of apartments would fail to provide for a sufficient level of amenity as set out in the Apartment Guidelines.
3. Due to the inadequate provision for servicing, deliveries, drop off and accessible parking facilities the proposal would generate servicing activity and overspill parking onto Harold's Cross road which is heavily trafficked along which there is a QBC and planned Bus Connects Core Bus Corridor. This would cause obstruction to pedestrians, cyclists, bus operations and other road users and would endanger public safety by reason of traffic hazard. It would be contrary to section 16.38 of the City Development Plan and Section 4.23 of the Apartment Guidelines.
4. The use of the access road serving the existing and proposed school adjacent would generate serious pedestrian/vehicular conflict and would endanger public safety by reason of traffic hazard.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planner's report notes:

- Notwithstanding the amendments following the previous refusal of permission it is considered that the scale and massing would represent a significant visual impact in the streetscape and wider area. The plans show that the 5

storey elevation across the entire width of the site would result in a visually obtrusive building that does not relate to the established proportions or heights of adjoining buildings or along the wider streetscape.

- There are also concerns regarding the massing and overbearing nature of the northern and southern elevations. The overall scale and depth of the building will read as dominant and overbearing relative to the neighbouring properties.
- The proposed external deck access along the ground to 4th floors would directly inhibit privacy and amenity of 25 no. apartments due to persons passing bedroom windows when accessing other apartments. The plans and elevations do not indicate any form of mitigation. The use of opaque glazing would inhibit light penetration and would result in reliance on electrical lights.
- The applicant has applied an Average Daylight Factor of 1.5% for combined living/kitchen/dining room. However when the 2% ADF value is applied 4 of the units at ground floor and 2 at 1st floor level fall below the 2%.
- There is a 66 sq.m. shortfall in communal open space, however the proximity of Harold's Cross Park is noted. The daylight/sunlight does not demonstrate that 50% of the ground floor communal courtyard would receive 2 hours of daylight on 21st March as per BRE guidelines. There are concerns regarding the usability of the space given its small area, the fact that it is enclosed on all sides and its proximity to an amenity space of the adjacent apartment. The rooftop garden is limited in terms of passive surveillance.
- There is potential for the development to overshadow and overlook existing rear gardens to the north.
- It is considered that the separation distance of 21 metres to the pub to the south is appropriate.
- Issues of deliveries, servicing and parking as raised in the Transport Planning Division's report summarised below noted.

A refusal of permission for 4 no. reasons recommended.

4.2.2. Other Technical Reports

Engineering Department – Drainage Division has no objection subject to conditions.

Environmental Health recommends conditions should permission be granted.

City Archaeologist's Report recommends a condition requiring archaeological monitoring should permission be granted.

Roads Planning Division of Roads Streets and Traffic Department recommends refusal of permission on grounds of inadequate provision of servicing, delivery, drop off and accessible parking facilities. The proposal would generate servicing activity and overspill parking onto Harold's Cross road and corresponding footpaths thereby causing an obstruction to pedestrians, cyclists, bus operations and other road users. Refusal is also recommended on reliance of adjacent access road which would generate serious pedestrian/vehicular conflict.

4.3. Prescribed Bodies

None.

4.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the observations summarised in section 7.4 below. Further issues raised relate to extent of build to rent proposals in the area, amenities of prospective occupants, absence of parking and knock on impacts in the vicinity and impact on existing and proposed school campus.

5.0 Planning History

ABP 307208-20 (2172/20) – permission refused for demolition of garage and showroom and construction of 6 storey over basement building providing for 43 apartments, 11 car parking and 88 bicycle spaces for two reasons which can be summarised as follows:

1. The design, scale, mass and bulk and proximity to adjoining properties would constitute overdevelopment and would excessively overlook adjoining properties. It fails to integrate or be compatible with the design and scale of adjoining buildings, would seriously injure the visual amenities of the

streetscape and would have an adverse impact on the character of the area. It would set an undesirable precedent.

2. The apartments would fail to provide for a sufficient level of amenities as set out in the Guidelines for Design Standards for New Apartments.

6.0 Policy Context

6.1. National Policy and Guidance

Regard is had to:

- National Planning Framework
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, (2020)
- Urban Development and Building Heights Guidelines for Planning Authorities December 2018.

6.2. Development Plan

Dublin City Development Plan 2016

The site is within an area zoned Z1: Sustainable Residential Neighbourhoods, the objective for which is to protect, provide and improve residential amenities.

Chapter 4 sets out policies for density and urban design

Policies SC13-17 and SC25 are applicable

Chapter 5 sets out policies for residential development.

Policies QH7, QH8, QH13, Qh18, QH19, QH20, QH22 are applicable

Chapter 10 sets out the Development Management requirements

Section 16.10.10 addresses infill development

Section 16.7 sets out requirements in terms of Building Heights

The site is within an area classified as 'outer city' where residential buildings up to 16 metres in height are permissible.

Table 16.1 sets out the car parking requirements with 1.5 space per residential unit required in zone 3.

6.3. **Natural Heritage Designations**

None in the vicinity.

6.4. **EIA - Screening**

The proposal comprising of 38 units is less than 10% of the threshold of 500 units which triggers a mandatory EIAR. It is considered, having regard to the size and scale of the development that there is no real likelihood of significant effects on the environment, Therefore, the need for an environmental impact assessment can be excluded by way of preliminary examination.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The submission by Hughes Planning and Development Consultants which is accompanied by supporting detail refers. The Board is requested to consider the application as lodged with the planning authority. Notwithstanding, an alternative design option is submitted for consideration by the Board.

The appeal can be summarised as follows:

7.1.1. **Proposed Design Amendments**

- 3rd and 4th floors have been set back further from the south to reduce scale, mass and overlooking potentially caused.
- It also sets back the external gallery along the northern elevation of the 4th floor, further setbacks to the southern elevation at 4th floor level and setback to the western elevation at 3rd floor level. The latter provides for a more appropriate level of enclosure between Harold's Cross Park and the development and introduces private balconies for two units along this elevation.

- The number of units has been reduced from 38 to 35 as a result of the amendments, now consisting of 4 no. studio units, 28 no. one bed and 3 no. two bed with 86% of the units dual aspect.

7.1.2. Reason for Refusal No.1 – Design, Scale and Mass

- The proposal is of a suitable scale, height and design to integrate into the surrounding context and streetscape.
- Regard is had to the residential development granted along Harold's Cross road under ref. 2186/15 (PL29S.245164) which is made up of blocks up to 6 storeys in height.
- The scale is appropriate due to its location, accessibility and availability of amenities.
- The proposal does not contravene the City Development Plan and is acceptable having regard to the precedent set in the vicinity.
- The proposal will improve the streetscape and accordingly protect the existing visual amenity of the area.
- The height will improve the sense of enclosure. The road is c.18 metres wide.
- The proposal is consistent with the pattern of development approved and developed in the area.
- It is compliant with the Building Height Guidelines.
- The site is served by quality public transport infrastructure and proximity to a wide range of services and amenities.
- The site is not located along protected views or within an architectural conservation area or any area with visual sensitivities.
- It is not monolithic and avoids long, uninterrupted walls.
- The form, massing and height has been carefully modulated so as to maximise access to natural daylight, ventilation and view with minimum overshadowing and loss of light.
- The garden of No.149 Harold's Cross Road does not currently receive a high level of sunlight. Any reasonable development on the site would result in a

loss of sunlight to the rear garden. The said 3 storey building has had extensions which have resulted in a reduced garden space which currently receives little or no sunlight on March 21st with the garage in place. No.149 is vacant and is owned by the Department of Education.

- The visual impact is considered acceptable due to the emerging character of Harold's Cross.
- The extra screening, use of opaque glazing and increased separation distances will protect the amenities of adjoining property.

7.1.3. Reason for Refusal No.2 – Prospective Amenities for Occupants

- The apartments meet the standards set out in the Apartment Guidelines.
- Amenity space includes a gym, meeting room, cinema room, lounge etc.
- The internal layout of the ground and 1st floor units are reconfigured in the amended design to ensure they are ADF compliant. All units now meet the 2% target.
- Due to the site's location to Harold's Cross Park the proposed 125 sq.m. open space provision is considered acceptable.
- Although the courtyard at ground floor level would not achieve 2 hours of sunlight on March 21st across at least 50%, the scheme has high quality amenity in terms of the proposed terrace and its proximity to Harold's Cross Park.
- The proposal is generally in accordance with the requirements of the BRE guidelines.
- The majority of the units are dual aspect.
- The galleries along the northern side of the development which will be used to access units is standard practice for apartment buildings and does not fail to provide for a sufficient level of amenity. It is no different to walking along a street with dwellings located up to the footpath. There are precedents across the city. The amenities of residents would not be adversely impacted.

7.1.4. Reason for Refusal No.3 – Access, Servicing and Parking

- There are other developments along the quality bus corridor that have managed servicing without the provision of a set down area or parking provision.
- The Apartment Guidelines states that development may entirely omit car parking where quality public transport is available.
- Car parking overspill is refuted in view of proximity of quality public transport, provision of 62 no. bicycle parking spaces and availability of car sharing facilities in the area.
- The existing garage and showroom has a requirement for a higher volume of servicing and drop offs than the residential scheme would generate.
- Servicing would be off peak, outside the operating hours of the bus lane.
- Access to the bicycle parking is convenient.
- Precedents for schemes without parking detailed.

7.1.5. Reason for Refusal No.4 – Use of Adjacent Access Road

- Updated Outline Construction Management Plan accompanies the appeal.
- Proposed access along Harold's Cross Road will facilitate the provision of an off loading area with a traffic management system to restrict access save from the south bound side of Harold's Cross Road. The bay will be one way and will be assembled alongside the covered walkway which will be constructed over the footpath as a protective measure for pedestrians.
- The existing access road to the former greyhound track will not be used.

7.2. Planning Authority Response

None.

7.3. Observations

7.3.1. Department of Education

The submission by Tom Phillips & Associates on its behalf can be summarised as follows:

- It does not object in principle.
- It agrees with the planning authority's 4th reason for refusal.
- The site includes lands that are outside the ownership of the applicant. No consent from the Department has been secured.
- In order for the proposed construction arrangements to take place the Department's consent as owner of the adjoining lands is required. No consent was sought or secured. The revised Outline Construction Management Plan accompanying the appeal submission is noted. There is concern that the construction impact of the proposed development has not been fully considered on the existing and proposed schools.
- Further detail required on proposed building entrance which appears to open northwards onto Department owned lands in addition to details regarding the northern and eastern boundary treatment.
- The interactions between a significant educational use which is a sensitive land use in planning terms and the construction and operation of the proposed BTR scheme requires careful assessment.

7.3.2. Sean Flanagan, Peggy Kelly's Pub and Restaurant

The submission can be summarised as follows:

- The current proposal does not address the previous reasons for refusal.
- The proposal is unsuitable due to its scale, overbearing impact and overlooking of his property including the outdoor dining area.
- The southern elevation shows a low level wall where currently a high level party boundary walls exists. The applicant does not have his consent to remove this wall.

- The residential amenity for prospective occupants would be severely diminished with the ongoing operation of the pub and outdoor area.
- The submission of an alternative scheme at appeal stage is unsatisfactory.
- The amended Construction Management Plan is ill considered and fails to address serious safety concerns. The proposed offloading would lead to traffic infringing on his property and blocking the entrance to the outdoor dining area. It would also lead to blockages at the entrance to the schools. It does not mitigate the hazard presented to pedestrians.
- The revised offloading area is on the public footpath for which consent is required from the City Council.
- The precedents referenced are not directly comparable.

8.0 **Assessment**

I consider that the issues arising in the case can be summarised as follows:

- Introduction
- Principle of Development and Density
- Apartments – Qualitative Standards
- Carparking and Site Servicing
- Amenities of Adjoining Property
- Suitability of Building Design and Visual Impact
- Other Issues
- Appropriate Assessment

8.1. **Introduction**

- 8.1.1. This is the 2nd appeal for demolition of the garage and showroom and construction of an apartment building on the site. The previous appeal was refused on two grounds relating to inappropriate scale, design and massing and substandard amenities for prospective applicants.

8.1.2. The key changes between the previously refused proposal and that subject of this appeal are as follows:

- The current scheme is specifically referenced as a Build to Rent Scheme with the application of the relevant provisions of the Guidelines for New Apartment Developments.
- Reduction in number of apartments from 42 to 38.
- Reduction in overall height by approx. 4 metres from 20.8 metres (6 storeys plus plant room on the roof) to 16.4 metres providing for a five storey building (5th storey set back).
- Omission of car parking at basement level.
- Additional measures to address overlooking.

8.1.3. The appeal submission is accompanied by further revised plans for consideration by the Board and include:

- 3rd and 4th floors have been set back further from the south.
- Set back of the external gallery along the northern elevation of the 4th floor, further setbacks to the southern elevation at 4th floor level and setback to the western elevation at 3rd floor level.
- The number of units has been reduced from 38 to 35.

8.2. Zoning Provisions and Density

8.2.1. As noted previously the site is within an area zoned Z1 wherein such a residential development would be acceptable in principle. In the context of the City Development Plan provisions the site is appropriately considered to be an infill site. The Board will also be aware of the various statements contained in the National Planning Framework which seeks to provide more compact development, emphasising the need to reuse previously developed brownfield land, building up infill sites, and redeveloping existing sites. The Framework Plan highlights the need to develop such urban infill sites, particularly sites in close proximity to city centres and along high-quality public transport routes at more sustainable densities. Notwithstanding, the suitability of the proposal is predicated on other planning

considerations being satisfactorily met including protection of amenities of adjoining property, suitability of design, visual impact and traffic considerations.

- 8.2.2. The development comprising of 38 units on a 0.0752 ha site equates to a density of 487 units per hectare. Whilst the City Development Plan sets out an indicative acceptable density of 50 units per hectare the Guidelines for Sustainable Residential Development in Urban Areas recommend that there should be no upper limit to density on such an inner suburban/infill site subject to qualitative safeguards. As noted by the Inspector on the previous appeal the density of permitted development in the vicinity of the site, notably on the lands at St. Clare's and at 126-128 Harold's Cross road to the north, have densities in the range of 90-220 units per hectare.
- 8.2.3. The development has a plot ratio of 3.47 which exceeds the development plan parameters of 0.5 - 2.0 for Z1 areas in the outer city whilst the site coverage of 75%, also exceeds the development plan parameters of 45%-60%. By way of the proposed amendments submitted with the appeal the reduction in the number of units to 35 units reduces the plot ratio marginally. The site coverage is unchanged.
- 8.2.4. There is no question that the site indicators are significantly greater than the indicative parameters set out in the development plan but that, of itself, does not render the development unacceptable and the proposal needs to be assessed in totality with regard had to other development control measures including building height, amenities of prospective applicants etc.
- 8.2.5. I would bring to the Board's attention that the immediately adjoining lands previously used as a Greyhound Stadium are now zoned Z15 in the current City Development Plan, the objective for which is to protect and provide for community and institutional uses. There is a concurrent appeal with the Board for an educational campus comprising both a primary and post primary school. File ref. ABP 311174-21 refers.

8.3. **Apartments - Qualitative Standards**

- 8.3.1. SPPR 7 and SPPR 8 of the Design Standards for New Apartments specifically refer to Build to Rent Schemes (BTR). SPPR 8 states that there are no restrictions on dwelling mix with flexibility to be applied in relation to the provision of a proportion of the storage and private amenity space associated with individual units and in relation to the provision of communal open space, on the basis of the provision of alternative, compensatory communal support facilities and amenities.

- 8.3.2. The scheme provides for 38 no. units as follows
- 29 no. 1 bedroom
 - 3 no. 2 bedroom
 - 6 no. studio
- 8.3.3. The scheme, as amended by the plans submitted with the appeal, reduces the number of studio units to 4 and 2 bedroom units to 28 giving an overall provision of 35 no. units.
- 8.3.4. All units meet the minimum floor space requirements as set out in SPPR 3. As originally proposed 82% are dual aspect which exceeds the 33% minimum requirements of SPPR 4. This is increased to 84% with the proposed amendments. The minimum floor to ceiling heights comply with the requirements of SPPR 5. The number of units per floor per core as required by SPPR6 does not apply to BTR schemes. I note that each unit provides for the minimum storage requirements set out in Appendix 1.
- 8.3.5. As originally proposed apartments to the front (western elevation) are to be served by Juliet balconies. The proposed amendments and set back of the 3rd floor level allows for two of the units to be served by balconies. All the other units are served by balconies with a southerly aspect which meet the minimum private amenity space requirements as set out in Appendix 1. The glazing to the balconies along the southern elevation comprising a mix of clear and opaque glazing of in the region of 1.7 metres high will provide for a level of privacy to the units from the adjoining public house and associated outdoor seating/patio area.
- 8.3.6. The proposed gallery/deck access to the units along the northern elevation is not an unusual arrangement with examples throughout the city. I would concur with the agent for the applicant that such an arrangement is akin to dwellings right up to the pavement with passing pedestrian traffic.
- 8.3.7. In terms of communal open space a 25 sq.m. courtyard at ground floor level and a 94 sq.m. roof terrace at 4th floor level are proposed. This falls short of the minimum requirements set out in Appendix 1 of the guidelines which would require between 174 and 177 sq.m. I would concur with the view that the amenity value of the

courtyard is constrained due to its limited size and enclosure although the roof terrace can provide for an acceptable level of amenity and privacy.

- 8.3.8. As facilitated under SSPR 8 a flexibility can be applied to the open space provision subject to other compensatory communal support facilities and amenities being provided. In this instance the facilities include a cinema room, games room, business lounge and concierge. The location of the site immediately opposite the public amenity space of Harold's Cross Park is also of relevance. On balance, therefore, the open space provision within the scheme is considered to be acceptable and is seen to accord with SPPR 8.
- 8.3.9. In terms of daylight and sunlight to the proposed units the BRE Guidance with reference to BS8206 – Part 2 sets minimum values for ADF that should be achieved. These are 2% for kitchens, 1.5% for living rooms and 15 for bedrooms. Section 2.1.14 of the BRE Guidelines notes that non-daylight internal kitchens should be avoided where possible, especially if the kitchen is used as a dining area too. If the layout means that a small, internal galley-type kitchen is inevitable, it should be directly linked to a well daylight living room. This guidance does not give any advice on the targets to be achieved within a combined kitchen/living/dining layout. It does however, state that where a room serves a dual purpose the higher ADF value should be applied.
- 8.3.10. The proposed apartment layouts include a kitchen/living/dining room. As these rooms serve more than one function the 2% ADF should be applied.
- 8.3.11. The application is accompanied by a Daylight and Sunlight Assessment Report. I refer the Board to Section 6.5 of same which sets out the results of the Average Daylight Factor for the units within the proposed development. The target value of 1.5% was applied to living/kitchen/dining rooms. As noted therein 4 no. apartment units at ground floor level and 2 no. units at 1st floor level do not meet the 2% requirements.
- 8.3.12. The amended scheme submitted for the Board's consideration with the appeal addresses this shortfall with the layout as altered allowing for the 2% minimum requirement for such living/dining/kitchen areas to be met. A revised Daylight and Sunlight Assessment Report is submitted in support. I am satisfied as to the veracity

of the results in so far as is practical and that the units assessed within the study represent the worst case scenario.

Qualitative Standards - Conclusions

8.3.13. On balance I consider that the proposed development as amended by the plans submitted with the appeal submission would provide for an adequate level of amenity for prospective occupants and would comply with the SPPR's of the Apartment Guidelines.

8.4. Car Parking and Site Servicing

8.4.1. The application is accompanied by a Traffic and Transportation Statement and includes a Travel Plan.

8.4.2. As per SPPR8 (iii) there shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures. Section 4.20 sets out the said suitable locations notable in or adjacent to a city centre or centrally located employment (i.e. 15 minutes walking distance). Such areas also include those within 10 minutes walking distance of a DART or Luas stop or within 5 minutes walking distance of high frequency (10 minute peak hour frequency) bus services.

8.4.3. The site along which there are bus routes providing a peak hour bus frequency of less than 10 minutes can be seen to accord with the above parameters. In addition and as part of the Bus Connects programme Route 11 from the City Centre towards Kimmage proposes a spinal bus corridor (F Spine) together with cycling facilities and will be easily accessible from the site. I also note the collection/drop off points for the shared Go Car scheme in the vicinity. I consider that the site can be considered to comply with the above requirements and is a suitable location for no car parking provision. I note the bicycle parking to be provided within the scheme.

8.4.4. Whilst the potential for overspill in terms of parking has been raised as a specific concern the fact that on-street parking in the vicinity of the site is controlled with pay and display and limits on duration would constrain such impacts.

8.4.5. In terms of site servicing I accept that the car showroom and garage on the site (noted to be occupied on day of inspection) would generate a level of servicing in its own right. I also note that other commercial properties to the south would not have the benefit of dedicated service areas and would be required to be serviced from the public road. The QBC in-front of the site has operational hours of 7am – 10 am and 12pm – 7pm and it is not unreasonable to conclude that any servicing/deliveries to the building could be outside of these hours.

8.5. Amenities of Adjoining Property

8.5.1. As noted previously the greyhound stadium grounds and access road to the east and north of the appeal site are owned by the Department of Education. By way of observation it is contended that consent for the use of the access road has not been sought or secured from same. It is also stated that the site incorporates lands which is not within the applicant's ownership. As can be extrapolated from the details accompanying the observation and as noted on-site inspection the area of overlap corresponds with the kerb that runs alongside the site boundary. I note that the footprint of the proposed building does not extend beyond the footprint of the existing building. The existing gated access to the old greyhound stadium grounds delineates the extent of the lands within the Department's ownership. I note that both access to the development and to the bin storage area are forward of the said line.

8.5.2. The landowner to the other side (Peggy Kelly's Pub) states that his consent for the removal of the wall along the shared boundary has not and will not be secured. As delineated on the plans accompanying the application the main body of the building is set back from the shared boundary.

8.5.3. As noted in section 5.13 of the Development Management Guidelines the planning system is not designed as a mechanism for resolving dispute over land and that these are ultimately matters for resolution in the Courts. I consider that for the purposes of making the application the applicant has demonstrated sufficient legal interest. I submit that any further issue between the parties would constitute a civil matter best resolved through the appropriate channels. I recommend that the applicant be informed of the provisions of Section 34(13) of the Planning and

Development, Act, 2000, as amended, which states that a person shall not be entitled solely by reason of a permission to carry out any development.

- 8.5.4. The absence of consent to use the existing internal access road has resulted in an updated Outline Construction Management Plan accompanying the appeal entailing access along Harold's Cross Road and the provision of an off loading area. A traffic management system to restrict access save from the south bound side of Harold's Cross Road is also proposed. The bay will be one way and will be assembled alongside the covered walkway which will be constructed over the footpath as a protective measure for pedestrians.
- 8.5.5. The construction access and vehicular constraints arising in the instant case are not an unusual scenario within built up areas and appropriate measures can be incorporated to ensure the adequate protection of both vehicular and pedestrian traffic including pupils attending the schools on the adjoining site during the construction phase. In my opinion this does not present sufficient grounds for which permission should be refused.
- 8.5.6. I acknowledge the sensitivity of the proposed educational campus. The proposed development is to the south-west of the main body of the site on which the school buildings. A distance of approx. 15 metres is to be maintained between the proposed development and the nearest school building. A condition requiring the omission of the windows serving the living/kitchen/dining areas in the eastern elevation is recommended. The said rooms will have the benefit of windows doors on the south facing elevation. Whilst the scheme will have an interface with the main access to the campus this, of itself, is not a unique scenario for which a refusal of permission would be warranted.
- 8.5.7. Peggy Kelly's pub bounds the site to the south with a beer garden provided in the open area right up to the site boundary. Relative to the previous proposal on site the separation distance has been increased with design solutions in terms of screening to the balconies proposed to protect the amenities of prospective occupants. Whilst I note the concerns as to the operation of the public house in terms of operating hours, noise etc. any future resident would be fully aware of the established use on the adjoining site and the resultant impacts.

- 8.5.8. The 3 storey property to the north and other side of the access to the stadium grounds is within the ownership of the Department of Education and is currently vacant. The properties further north again (Nos. 147 Harold's Cross Road and Park View Court) are in excess of 10 metres from the site boundary.
- 8.5.9. The Daylight and Sunlight Assessment (as amended to take into consideration the proposed alterations submitted to the Board for consideration) assesses the impact of the development on adjoining properties in terms of daylight and sunlight. I consider that the assessment complies with best practice in terms of the locations tested based on guideline recommendations for the closest façades which have windows with potential for impact.
- 8.5.10. As per the results of the effect on Vertical Sky Component, adjoining properties would be compliant with BRE recommendations with imperceptible effects.
- 8.5.11. In terms of overshadowing of rear gardens, that serving No. 149 by reason of the extent of development to the rear of the property receives little if any sunlight on 21st March. It receives sunlight in c.18% of the space. The proposal will result in further overshadowing. I submit that such impact must be balanced against the need to develop infill sites at higher and more sustainable densities in accordance with nationally adopted strategies. Such strategies obviously have the potential to increase levels of overshadowing and overlooking on adjoining property particularly in tightly grained urban infill areas. I submit that the increased overshadowing that would arise is acceptable in allowing for the development of the site and would not justify a refusal of permission.

8.6. **Suitability of Building Design and Visual Impact**

- 8.6.1. The site has a prominent position on Harold's Cross Road given the building alignment forward of that of the adjoining buildings, its position at the entrance to the former Harold's Cross Stadium and its location opposite Harold's Cross Park. This is in the context of an area which is undergoing material change with extensive redevelopment of lands in the vicinity including the residential scheme on St. Clare's Lands, at Nos. 126-128 Harold's Cross Road and the proposed educational campus on the former greyhound stadium grounds immediately adjoining subject of an appeal under ref. ABP 311174-21. The residential developments referenced range in height from 3 to 6 storeys.

- 8.6.2. The development as originally submitted proposes a 5 storey building (5th storey set back) with an overall height of 16.4 metres. The amendments submitted for the Board's consideration include alterations to the building providing for a set back of the 3rd and 4th floors from the southern and western elevations. The height marginally exceeds the 16 metre limit set out in the current City Development Plan for residential development and would be seen to accord with the Guidelines on Urban Development and Building Heights which advocates for increased building height in suitable locations including town and city cores and areas that have good public transport connectivity.
- 8.6.3. I consider that the development subject to the amendments proposed at this appeal stage providing the stepped modulation of the upper floors assists in breaking up the scale, mass and bulk of the building and, in my opinion, would not give rise to concerns in terms of overbearance. The modern iteration in terms of design execution and materials proposed to be used which are durable and of a high standard are acceptable.
- 8.6.4. As evidenced from the photomontages, which I consider to provide a reasonably accurate portrayal of the completed development, the visual impact of the development is limited to its immediate vicinity. Certainly as viewed along Harold's Cross Road from either direction and from the park immediately opposite, the impact is acceptable when taken in the context of the emerging pattern of development in the vicinity. The greatest intervention is when viewed from Parkview Avenue from the south but is of a level which is considered acceptable.
- 8.6.5. I consider that the extent of visual change would be in character with the constantly evolving and restructuring urban landscape and the existing scale of development in the area.

8.7. **Appropriate Assessment - Screening**

- 8.7.1. I note that an appropriate assessment screening report was submitted with the application. It notes that the nearest Natura 2000 sites are located in South Dublin Bay a distance of approximately 4.5 kilometres away. The report in my opinion reasonably concludes that there is no likelihood of any significant effects on Natura 2000 sites arising from the proposed development.

- 8.7.2. Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the distance to the nearest European site no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a European site.

9.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

10.0 Reasons and Considerations

Having regard to:

- (a) the Z1 zoning objective for the area in the current Dublin City Development Plan, the objective for which is to protect, provide and improve residential amenities,
- (b) The National Planning Framework issued by the Department of Housing Planning and Local Government according to which new residential development in cities should be directed into locations within the existing built-up serviced areas,
- (c) Sustainable Urban Housing: Design Standards for New Apartments: Guidelines for Planning Authorities, issued by the Department of Housing, Planning and Local Government in March, 2018 in section 5 of which provision is made for purpose-built residential accommodation and associated amenities built specifically for long term rental that is managed and serviced in an institutional manner by an institutional landlord,
- (d) the design, form, height, materials and finishes of the proposed development, the internal layout of the proposed residential units, and access to light, aspect and private open space provision. The extent and range of communal internal and external facilities and amenities available to residents and the established pattern and character of existing development in the area, and

- (e) the location within a well serviced, inner suburban area in close in proximity to the city centre, public transport facilities and a good local road network, and a wide range of community and social facilities

it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with national strategic policy and local development policies and objectives for the area, as set out in the current Development Plan for the area, would not seriously injure the visual or residential amenities of the area, would not adversely affect the amenities of adjoining property and would 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 plans and particulars received by An Bord Pleanála on the 26th day of July, 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. Prior to commencement of development, the developer shall submit, for the written agreement of the planning authority, details of the Management Company, established to manage the operation of the development together with a detailed and comprehensive Build-to-Rent Management Plan which demonstrates clearly how the proposed Build-to-Rent scheme will operate.

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

3. The development hereby permitted shall be for Build-to-Rent units which shall operate in accordance with the definition of Build-to-Rent developments, as set out in the “Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities” issued by the Department of Housing, Planning and Local Government in March, 2018 and shall be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

4. Prior to the commencement of development, the owner shall submit to, and agreed in writing with, the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than fifteen years and where no individual residential units shall be sold separately for that period. The period of fifteen years shall be from the date of occupation of the first apartments within the scheme.

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

5. Prior to expiration of the fifteen-year period referred to in the covenant, the owner shall submit to, and agree in writing with, the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and of clarity.

- 6 The windows in the eastern elevation serving the living/dining/kitchen areas of the relevant apartments units shall be omitted. Revised drawings with the necessary alterations made thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interests of amenities of adjoining property.

7. 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 numbers shall be provided in accordance with the agreed scheme.

Reason: In the interests of amenity.

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

Reason: In the interest of visual amenity.

9. Water supply and 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.

10. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to commencement of development.

Reason: In the interest of orderly development.

11. No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication antennas, shall be erected at roof level other than those shown on the plans lodged with the application. All equipment such as extraction ventilation systems and refrigerator condenser units shall be insulated and positioned so as not to cause noise, odour or nuisance at sensitive locations.

Reason: In the interests of visual and residential amenities.

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

Reason: In the interest of sustainable waste management.

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

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

14. Site development and building works shall be carried out only between the hours of 0700 to 1800 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.

15. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing overground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

16. 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.

17. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

18. 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 or 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.

Pauline Fitzpatrick
Senior Planning Inspector

March, 2022