



An
Bord
Pleanála

Inspector's Report

ABP-311428-21

Development	Demolition of buildings and construction of 2 retail units and 20 apartments with car and bicycle parking, and associated site works.
Location	Site at The Mart, Old Bray Road & Mart Lane, Cornelscourt, Dublin 18
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D20A/0884
Applicant(s)	Susannah DeNardo
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Susannah DeNardo
Observer(s)	Edward P. and Noreen Farrell Declan and Miriam Fitzgerald Maurice and Therese Moynihan Angela and Anthony Lincoln

Foxrock South Residents Association
Chairperson of the Board of
Management, St. Brigid's Boys School

Date of Site Inspection

8th July 2022

Inspector

Phillippa Joyce

1.0 Site Location and Description

- 1.1. The appeal site is located at 'The Mart', a corner site formed at the intersection of the Old Bray Road (eastern boundary) and Mart Lane (southern boundary) in Cornelscourt, Dublin 18. The site is c.75m southwest of the junction with the Stillorgan Road N11 dual carriageway and Quality Bus Corridor (QBC), and c.250m north of Cornelscourt village.
- 1.2. The site has an irregular rectangular configuration, which is indicated as measuring c.0.27ha (2,708sqm) in area (at CFI response stage). The site comprises a pair of semi-detached, three bay, double 'A' pitched roof buildings with single storey elements attached at each gable end. The buildings are traditional structures dating from c.1850s, which have undergone various alterations. At ground floor level, the buildings have been subdivided to accommodate several commercial uses (retail, services), while at the first floor level is ancillary office space and an apartment. To the rear of the buildings is a yard area with shed/ storage structures located along the site's southern boundary. The site incorporates the public footpath and road along Mart Lane, and the street frontage area adjacent to the commercial units including the public footpath and surface car parking on Old Bray Road and former grass verge at 1 and 2 Old Bray Road.
- 1.3. The site is located towards the northern edge of Cornelscourt village, with an associated mix of uses and buildings to the south and southeast including 3 storey offices (Units 1-4 Aspen Court and the AIB offices). Lands to the north (Old Bray Road) and west (Mart Lane, Cairn Hill) are residential areas predominantly characterised by two storey detached and semi-detached dwellings on relatively large plots and/ or with long rear gardens. Adjacent to the north of the site are 1 and 2 Old Bray Road, a pair of semi-detached structures in commercial use as 'Cocobee' childcare facility, and adjacent to the northwest and west are detached residential properties, 'Foxrock House' and 'Sequoia' respectively. Mature trees and vegetation feature along the western and southern site boundaries.
- 1.4. The topography of the area is notable as the site is positioned at a lower level than lands further to the west along Mart Lane. The ground levels fall from c.57.5m OD at the site's western boundary to c.54.5m OD at the site's eastern boundary, and continue to fall to c.52.5m OD at the intersection of the Old Bray Road with the N11.

2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of the existing buildings within the site and the construction of a mixed use development with a single building, referred to as Block A, new vehicular entrance, surface parking, upgraded services, boundaries, and public realm works. The demolition and site clearance works include the removal of existing structures, hardstanding area, site services, and vegetation within the site.
- 2.2. The proposed block is centrally positioned within the site, its building footprint accommodating the majority of the area. The block is rectangular in configuration, laid out on an east-west alignment, and ranges from 3 to 5 storeys in building height. Due to the site's topography, the plans and particulars refer to lower and upper ground floor levels. The retail component of the scheme is accommodated at the lower ground floor level (not a full floor level in depth). There are two separate retail units which are positioned in the northeastern and southeastern corners, respectively, of the block with frontages addressing the Old Bray Road. The remaining four levels (upper ground, first, second and third floor levels) accommodate undercroft car parking, residential accommodation of 20 apartments, and open space (podium garden and roof terrace).
- 2.3. With regard to site access, the proposal separately services the retail and residential components. For the retail component, pedestrian access to the retail units is achieved directly via the shopfronts at the lower ground floor level on the eastern elevation of the block addressing Old Bray Road. For parking, the proposal involves a redesign of the existing area at the front of The Mart along Old Bray Road. The area accommodating c.10 perpendicular car parking spaces and footpath will be replaced with four parallel car spaces, improvements to the public footpath, and provision of 8 bicycle spaces to serve customer parking, services, and delivery set down associated with the retail units.
- 2.4. For the residential component, the proposal involves the closure of the existing vehicular entrance, located at a central point along the site's southern boundary on Mart Lane, and its replacement with a new entrance located c.30m further to the west along the public road. The new vehicular entrance provides access into the site at the upper ground floor level to car and bicycle parking spaces. These include

surface parking (6 car spaces and 10 bicycle spaces) along the western site boundary, and undercroft parking (16 car spaces and 36 bicycle spaces) along the northern site boundary. Pedestrian entrance points into the block to access apartments include the main entrance at the lower ground floor level on Mart Lane (southern elevation), an entrance from the undercroft parking on the northern elevation at the upper ground floor level, and a small number of apartments have direct own-door access from Mart Lane at the upper ground floor level.

2.5. With regard to site services, the proposed development includes new infrastructure and connections into existing public surface water drainage, wastewater drainage, and watermains systems located along Mart Lane or Old Bray Road. For surface water, the proposal includes SuDS features (green roof areas comprising planters on podium slabs and sedum roof), with runoff flowing through new piped infrastructure, retention in an on-site attenuation tank, and discharge via gravity through a new surface water sewer in Mart Lane to the existing public sewer at the junction of Mart Lane and Old Bray Road. For wastewater, effluent arising from the proposal will be discharged by gravity via new piped infrastructure to the existing foul sewer in Mart Lane. For water supply, the apartments will be served through new piped infrastructure connecting to the existing public watermains in Mart Lane, while the retail units will be served from an existing watermains in Old Bray Road.

2.6. In addition to the standard plans and particulars, the application as initially lodged was accompanied by the following reports and documentation:

- Planning Report (with Appropriate Assessment Screening Report);
- Planning Booklet (Architectural Design);
- Schedule of Accommodation;
- Architectural Conservation Assessment;
- Tree Protection Plan;
- Tree Survey Report;
- Landscape Design Report;
- Landscape Masterplan;
- Visual Impact Photomontages;

- Transport Statement;
- Infrastructure Report;
- Letter of consent from Dún Laoghaire Rathdown County Council to include 0.055ha of lands along Mart Lane within the site.

2.7. Following a Further Information (FI) request, land ownership, supplemental technical information and revised plans were submitted for the proposal (the FI response was deemed to be significant FI (SFI) and readvertised accordingly). Revisions were proposed to the scheme, key among which included the setting back of the northern building line at the second floor level, and an associated redesign of apartment 13 from a 2 bedroom unit to a studio unit.

2.8. At SFI response stage, in association with the revised plans the following new and/or revised reports were submitted:

- Planning Report;
- Schedule of Accommodation;
- Ecological Impact Assessment;
- Bat Fauna Survey;
- Landscape Design Report;
- Landscape Masterplan;
- Sunlight, Daylight and Shadow Assessment;
- Engineering (Transportation and Surface Water) Report;
- Building Lifecycle Report;
- Operational Waste Management Plan;
- Noise Impact Assessment (with Environmental Baseline Noise Survey);
- Operational Phase Odour and Noise Management Plan; and
- Construction Environmental Management Plan.

2.9. Following a clarification of FI (CFI) request, land ownership, supplemental technical information and revised plans were submitted. The key revisions related to

boundary treatments and tree protection measures with a revised Arboricultural Report submitted.

- 2.10. For clarity and ease of reference, the following tables present the principal characteristics, features and floor areas of the proposed scheme as assessed by the planning authority at CFI response stage. I have extrapolated the key statistics from the application form, plans, particulars, and schedules of accommodation incorporating the reduction in the floor area at SFI stage.

Table 1: Key Statistics

Site Area combination of:	Total: 0.27ha (2,708sqm) 0.167ha (1,678sqm) owned by applicant 0.047ha (474.3sqm) legal entitlement by applicant 0.055ha (555.2sqm) controlled by DLRCC
Floor Areas combination of:	Demolition floor area: 979sqm Proposed floor area: 2,963sqm Retail: 558 sqm (Unit 1: 489sqm and Unit 2: 69sqm) Residential: 1,941sqm Undercroft parking: 464sqm
Residential Units (see Table 2)	20 apartments
Residential Density (net)	119 units per ha (based on developable site area, i.e. lands owned by applicant)
Building Height (storeys, principal height)	First floor level (three storeys, c.10.44m) Second floor level (four storeys, c. 14.26m) Third floor level (five storeys, c. 16.75m)
Aspect	Dual aspect: 12 apartments (60%)
Part V Provision	Two 1 bedroom apartments (upper ground/ first floor levels)
Open Space combination of:	Total provision: 358sqm Podium garden, first floor level: 236sqm Roof terrace, third floor level: 122 sqm
Car Parking combination of:	Total provision: 26 spaces Residential: 22 spaces (20 resident (1 per unit), 2 visitor)

	Retail: 4 spaces (dual purpose, set down area)
Bicycle Parking combination of:	Total provision: 54 spaces Residential: 46 spaces (36 resident, 10 visitor) Retail: 8 spaces

2.11. The proposed residential mix, the tenure of which is assessed as being build-to-sell, is as follows:

Table 2: Summary of Residential Unit Mix

Unit Type	Studio	1 bed	2 bed	3 bed	Total
Upper ground floor	-	2	3	-	5
First floor	-	2	5	-	7
Second floor	1	1	4	-	6
Third floor	-	-	1	1	2
Total	1	5	13	1	20
% of Total	5%	25%	65%	5%	100%

3.0 Planning Authority Decision

3.1. Summary of Decision

3.1.1. On 24th August 2021, the planning authority issued a Notification of Decision to Refuse Permission due to one refusal reason, as follows:

The applicant has failed to demonstrate sufficient legal interest in the area identified on the submitted Site Plan entitled 'Architectural Drawing 2001-Site-0500-A' as the 'Legal Entitlement Area'. The works shown in this area are integral to the scheme as proposed. As such, the planning authority does not consider that the applicant has demonstrated sufficient legal interest in the entirety of the 'red line' site to carry out the proposed development, and that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with any permission issued on foot of this application.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's reports are the basis for the planning authority decision. The key items from the planner's initial report, and the subsequent SFI and CFI reports can be summarised as follows:

Initial Assessment

- Proposed net density of 119.7 uph is acceptable in principle having regard to the Apartment Guidelines (site is an accessible urban location as it is c.97m from N11 QBC bus stop);
- Proposed building heights of 3-5 storeys are acceptable in principle having regard to the Building Height Strategy (site is in a residual suburban area which allows 3-4 storeys with 1-2 storeys increase modifiers when proximate to N11) and the Building Height Guidelines (support increase heights and densities in urban locations);
- Proposal satisfies the Building Height Guidelines test for scale of city/ town, and district/ neighbourhood/ street, but not for scale of site/ building;
- Design, scale, elevation treatment, and external finishes of proposal considered acceptable in principle and to have a positive visual impact, except for the northern elevation;
- Proposed apartments comply with SPPR requirements as per the Apartment Guidelines and are acceptable;
- Proposed mix of unit types (five 1 bedroom (25%), 14 2 bedroom (70%), and one 3 bedroom (5%) units) is acceptable, particularly having regard to the predominance of family homes in the area;
- Proposal not considered to cause an unreasonable amount of overlooking or overbearance on residential properties to the north, west and south due to adequate separation distances;
- Welcomes proposed public realm works creating a plaza outside the two ground floor retail units;
- Welcomes predominantly glazed design of retail units and their providing excellent active frontage on the public plaza onto Bray Road and Mart Lane;

- Accepts the established use of the front area for car parking serving the existing shopping parade is a relevant consideration in the proposal;
- Extent of tree removal and compensatory replanting of trees within the site is considered acceptable;
- New vehicular access from Mart Lane, location and quantum of car parking for apartments, and quantum cycle parking for the overall scheme is considered acceptable;
- Water supply and wastewater infrastructure connections are acceptable;
- Applicant's Part V proposal for providing two 1 bedroom units is acceptable; and
- Demolition of original buildings considered acceptable as these have been subject to alteration and extension over decades of commercial use.

Further Information Request and Response

- FI requested on 19 items including the design of the northern elevation of the apartment block, the quantum of existing and proposed retail/ commercial floorspace, extension of the internal roadway to adjoin lands at Foxrock House to the north, a daylight, sunlight, and shadow impact assessment, opaque windows in northern elevation, a boundary treatment plan, separation distance to western adjacent property, positioning of cycle stands, demonstrate sufficient legal interest through provision of a consent letter for the lands to the front of the existing buildings, public realm works to be extended to include the area being used for informal car parking in front of the creche, waste management details for the retail units, proposed signage for the retail units, a landscape plan with details of trees, screening and open space provision, details for taking in charge of public realm, DMURS quality audit, cycle parking siting, electrical charging infrastructure, car parking provision for retail units, surface water drainage infrastructure and connections, an ecological impact assessment, a public lighting plan, a construction management plan, a noise impact assessment, an odour management plan, refuse management details for the apartments, and management company details and a building lifecycle report for the scheme.

- FI response submitted to the planning authority on 2nd June 2021 deemed significant (SFI);
- SFI response resulted in changes to the scheme including a revised design of the northern elevation at second floor level (apartment 13 set back from northern boundary to align with the northern building line of apartment 14), redesign of apartment 13 from a 2 bedroom unit to a studio unit (reduction c.41sqm in floorspace), additional roof space serving as a raised planter, amended red line boundary to include additional lands located to the front of the creche (1 and 2 Bray Road), inclusion of this additional area in the overall public realm works (paving and landscaping), extension of internal road layout towards adjacent lands (Foxrock House) on northern boundary, wider northern facing windows for apartments 1 and 7, repositioned cycle parking in northeastern corner of the public realm on Old Bray Road, refuse storage areas within each retail unit and a shared retail waste marshalling area at southern boundary, design amendments to the on-street car parking spaces on Old Bray Road, and additional landscaping details for privacy planting, contrasting paving, play features and varied communal area seating.
- SFI items deemed to be acceptable include:
 - Revised design of northern elevation including a set back of built form at second floor level, use of opaque glazing for all windows, boundary treatments (glass balustrade with/ without low wall) for the podium and roof garden address concerns of visual overbearance and adverse impact on amenity of northern properties;
 - Increase in retail/ commercial floorspace by 74.4sqm from 483.5sqm (existing) to 558sqm (proposed) accords with the 2016 CDP strategy for Neighbourhood Centres;
 - Extended internal road design to northern lands (Foxrock House) prevents a ransom strip and facilitates future development;
 - Residential amenity of future residents and adjacent properties in respect of access to daylight and sunlight is safeguarded (Sunlight, Daylight and Shadow Assessment indicates acceptable levels to windows, buildings, private amenity spaces);

- Inclusion of additional lands adjacent to the creche in the public realm improvements is welcomed (subject to demonstration of sufficient legal interest);
- Signage for retail units can be agreed through a prior to occupation condition in the event of a grant of permission;
- Additional landscaping details (demarcation between types of spaces, surface materials, street furniture) and features (play element, varied seating) address open space qualitative concerns;
- Taking in charge (areas, infrastructure), traffic safety (proposed parallel parking is an improvement on the existing restricted perpendicular parking at the Old Bray Road), cycle and car parking provision (end user, quantum, location, and positioning) are acceptable;
- Surface water technical details, connections to public system, green roof area specification are acceptable;
- Presence of bats not recorded in site and the proposal will have a neutral impact on local ecological receptors, which can be addressed through condition in the event of a grant of permission; and
- Concerns for impacts associated with the construction and operational of the scheme are addressed (demonstrated through acceptance of the Lighting Layout Plan, Construction Management Plan, Operational Phase Odour and Noise Management Plan, Building Lifecycle Report, and Taking in Charge details supplementing proposals for the property management company).

Clarification of Further Information Request and Response

- CFI requested on four items including the requirement to demonstrate sufficient legal interest in all lands included within the extended red line boundary, boundary treatments with western and northern properties, waste management details for the retail units, and tree protection measures;
- CFI response submitted to the planning authority on 28th July 2021, and resulted in changes to the scheme including detailed boundary treatment proposals (2m concrete wall with tall planting along the western boundary,

and 2m timber fence along the north/ northwestern boundary), and the retail waste area screened by a brick wall;

- CFI items deemed to be acceptable include:
 - Boundary treatments with properties north and west, screening and use of retail bin storage area, and impact on trees in adjacent western property (protection measures during construction works and nature of development is outside the root protection areas (RPAs));
 - Screening for appropriate assessment undertaken (at initial, SFI and CFI stages) which concludes the proposed development would not significantly impact on a Natura 2000 site; and
 - Screening for environmental impact assessment undertaken (at initial, SFI and CFI stages) which concludes that the need for EIA has been excluded at preliminary examination;
- Applicant's position on having legal entitlement to include the lands at the front of the existing shopping parade and crèche operation in the proposal is not considered to have been sufficiently demonstrated;
- Concludes that refusal of permission is necessary on the basis of insufficient legal interest.

3.2.2. Other Technical Reports

Transportation Planning: initial report recommended FI on a quality audit, taking in charge, car and cycle parking provision items. Subsequent SFI report notes satisfactory resolution of items, and no objection subject to conditions.

Surface Water Drainage Planning: initial report recommended FI on interception storage, connection points, green roof compliance, and permeable paving items. Subsequent SFI report notes satisfactory resolution of items, and no objection subject to conditions.

Parks Department: initial report recommended FI on access, usability of areas, design specifications, and tree protection measures. Subsequent SFI report recommends refusal of permission due to nature of the open space and impact on trees (T4 and T5) in adjacent western property due to surface car parking.

Environmental Health Officer: initial report recommended FI on construction, noise, odour, refuse storage items. Subsequent SFI report notes satisfactory resolution of items, and no objection subject to conditions.

Housing Department: report notes the transfer of ownership of two 1 bedroom apartments to comply with Part V obligations and maintains position to review proposal as necessary.

3.3. **Prescribed Bodies**

Irish Water: no objection, recommends standard conditions for connection agreements subject to available capacity and compliance with codes and practices.

Department of Defence: no objection, due to proximity to Casement Aerodrome requires notification of crane operation 28 days prior to use.

3.4. **Third Party Observations**

3.4.1. The planning authority received 40 submissions (initial, SFI, and CFI stages) from third party observers during the processing of the application. Submissions are in objection to the proposed development.

3.4.2. The issues raised in the third party submissions to the planning authority continue to form the basis of the observations made by the observers on this appeal, which are outlined in detail in Section 6.0 below.

4.0 **Planning History**

Appeal Site

None of direct relevance.

Planner's report refers to PA Ref. D09A/0259 described as a refusal of outline permission by the planning authority and An Bord Pleanála, which I could not identify/ find a record of on available planning registers.

Lands to Southeast

ABP 312132-21 (SHD application)

Permission granted on 13th April 2022 to Cornel Living Ltd for 419 no. build-to-rent residential units (7 no. houses, 412 no. apartments), creche and associated site

works. Apartments arranged in five Blocks A-E, ranging in height from four to 12 storeys.

Condition 4 includes the omission of Block E (four storeys in building height, fronting onto the Old Bray Road in Cornelscourt village).

5.0 Policy Context

5.1. Having considered the nature of the proposed development, the receiving environment, the application with submissions and decision of the planning authority, the appeal and observations, I consider the following policy and guidance to be of relevance to the determination of the appeal.

5.2. National Planning Context

National Planning Framework, Project Ireland 2040 (NPF)

5.2.1. A number of overarching national policy objectives (NPOs) are identified relating to targeted future growth in appropriate locations in Dublin City and suburbs. The appeal site is located within the boundary of the 'Dublin City and suburbs' area which is identified for consolidated future growth in the NPF.

5.2.2. NPOs for appropriately located and scaled residential growth in the Dublin area include:

- NPO 2a: A target of half (50%) of future population and employment growth will be focused in the existing five Cities and their suburbs.
- NPO 3b: Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.
- NPO 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- NPO 27: Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.

- NPO 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- NPO 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

Section 28 Ministerial Planning Guidelines

5.2.3. The following Section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. For ease of reference, I propose using the abbreviated references for the titles of certain guidelines, as indicated below.

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009, and the accompanying Urban Design Manual: A Best Practice Guide, 2009 (Sustainable Residential Development Guidelines);
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, December 2020 (Apartment Guidelines);
- Urban Development and Building Heights, Guidelines for Planning Authorities, December 2018 (Building Height Guidelines);
- Design Manual for Urban Roads and Streets, December 2013 (DMURS);
- The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009 (Flood Risk Guidelines); and
- Development Management, Guidelines for Planning Authorities, 2007 (Development Management Guidelines).

5.2.4. As appropriate, specific requirements, policies, and objectives of the Section 28 Guidelines are cited and considered within the Section 7.0 Planning Assessment of this report.

5.3. **Regional Planning Context**

Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031 (RSES)

5.3.1. The RSES provides a development framework for the region, including a specific Metropolitan Area Strategic Plan (MASP) covering Dublin City and suburbs, which the appeal site is located within. The MASP identifies the 'City Centre within the M50' as a Strategic Development Area/ Corridor. Accordingly, a number of regional policy objectives are applicable to the proposed development, including:

- Development Policy for the 'City Centre within the M50' focuses on the processes of regeneration, redevelopment, and consolidation of older residential, industrial and underutilised lands;
- In Table 5.1 Strategic Development Areas and Corridors, the City Centre within the M50 area is identified as having a population capacity total of 60,000 persons (in the short term of 35,000, increasing by 10,000 in the medium term, and increasing by 15,000 in the long term);
- RPO 5.3: Future development in the Dublin Metropolitan Area shall be planned and designed in a manner that facilitates sustainable travel patterns, with a particular focus on increasing the share of active modes (walking and cycling) and public transport use and creating a safe attractive street environment for pedestrians and cyclists.
- RPO 5.4: Future development of strategic residential development areas within the Dublin Metropolitan Area shall provide for higher densities and qualitative standards as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing: Design Standards for New Apartments' Guidelines and 'Urban Development and Building Heights Guidelines for Planning Authorities'.
- RPO 5.5: Future residential development supporting the right housing and tenure mix within the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs, and the development of Key Metropolitan Towns, as set out in the Metropolitan Area Strategic Plan (MASP) and in line with the overall Settlement Strategy for the RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns.

5.4. Local Planning Context

Change between Dún Laoghaire Rathdown County Development Plans

- 5.4.1. The Dún Laoghaire Rathdown County Development Plan 2016-2022 (2016 CDP) was in effect at the time the planning application was lodged and assessed, and when the appeals were made on the planning authority decision. As such, the application and appeal documentation both refer to policy in the 2016 CDP (which, where relevant, are stated in Section 6.0 The Appeal of this report).
- 5.4.2. In the interim, the Dún Laoghaire Rathdown County Development Plan 2022-2028 (2022 CDP) came into effect on the 21st April 2022 (the Draft Ministerial Direction issued to the planning authority is not applicable to the appeal case). Accordingly, therefore, this appeal is assessed with regard to the provisions of the 2022 CDP.

Dún Laoghaire Rathdown County Development Plan 2022-2028

- 5.4.3. The relevant 2022 CDP map based designations include:
- The site is subject to two zoning objectives. The majority of the site (eastern portion) is zoned as Objective 'NC' which seeks to 'To protect, provide for and/ or improve mixed-use neighbourhood centre facilities'. The remainder of the site (western portion) is zoned as Objective 'A' which seeks to 'To provide residential development and improve residential amenity while protecting the existing residential amenities'; and
 - Core Bus Corridor designation applies along the Stillorgan Road N11 c.75m to the northeast of the site.
- 5.4.4. I consider the most relevant local 2022 CDP policy and requirements to be within Chapter 4 Neighbourhood: People, Homes and Place (higher density, appropriate infill design, housing mix, quality building design), Chapter 7 Towns, Villages and Retail Development (strategy for existing neighbourhood centres, appropriate range and mix of development in centres), Chapter 12 Development Management (overall design, apartment qualitative and quantitative standards developments in neighbourhood centres, parking provision, open space provision), and Appendix 5: Building Height Strategy (definitions and assessment requirements for individual planning applications).
- 5.4.5. Chapter 4 Neighbourhood: People, Homes and Place outlines policy for increasing the supply of quality residential development in an appropriate manner:

- Section 4.3.1.1, Policy Objective PHP18: Residential Density – increase housing supply, encourage higher residential densities, and promote urban growth through consolidation and intensification of infill sites;
- Section 4.3.1.3, Policy Objective PHP20: Protection of Existing Residential Amenity – infill developments of greater density and building height to adjacent residential areas required to protect existing residential amenity through appropriate design and siting;
- Section 4.3.2.3, Policy Objective PHP27: Housing Mix – create sustainable residential communities by providing a wide variety of housing and apartment types, sizes, and tenures; and
- Section 4.4.1.8, Policy Objective PHP42: Building Design and Height – encourage high quality design and compliance with the Building Height Strategy in new developments.

5.4.6. Chapter 7 Towns, Villages and Retail Development outlines policy for appropriately designed, scaled and mixed use developments in neighbourhood centres:

- Section 7.5.4.1, Policy Objective RET7: Neighbourhood Centres – develop these centres as the focal point for communities and neighbourhoods through an appropriate mix, range, and type of uses; and
- Section 7.5.4.1 states the function of neighbourhood centres is to provide a range of retail outlets and services within walking distance for the local catchment population, and that new residential uses may be suitable.

5.4.7. Chapter 12 Development Management contains requirements for new development and redevelopment proposals:

- Section 12.3.1.1, Design Criteria – comply with national planning guidance, land use zoning, policy objectives, and numerous urban design standards;
- Section 12.3.3.1, Residential Size and Mix and Table 12.1 – ensure new developments have an appropriate mix of unit types;
- Section 12.3.5, Apartment Development – numerous qualitative and quantitative standards for design, size, floor areas, room proportions, storage, private open space;

- Section 12.3.7.9, Living-Over-The-Shop – facilitate such developments that contribute to the renewal of areas (deviations from normal standards may be given for private open space, parking, and unit size standards);
- Section 12.3.9, Demolition and Replacement Dwellings – replacement of a single dwelling with multiple units will be weighed against a number of factors including distinctiveness of dwelling and gardens, and whether any such dwelling is habitable;
- Section 12.4.5.1, Parking Zones – accord with parking standards for relevant zones (appeal site is located in Zone 2: Near Public Transport, requiring 1/ 2 car space(s) per 1 and 2/ 3 bedroom apartments, no specific visitor parking, and 1 car space per 40sqm retail floorspace, none for retail floorspace <100sqm);
- Section 12.4.5.2, Application of Standards – deviations from standards may be appropriate for smaller infill proposals and subject to certain criteria (proximity to public transport services, existing availability of parking and its potential for dual use);
- Section 12.4.5.6, Residential Parking – resident and visitor parking in apartment schemes to be differentiated, spaces not to be sold separately, and all managed by a management company;
- Section 12.4.6 Cycle Parking – defers to standards in ‘Standards for Cycle Parking and associated Cycling Facilities in New Developments’ (apartments require 1 long-term space per unit, and 1 short-term space per 5 units);
- Section 12.6.1, Assessment of Development Proposals in Towns, District and Neighbourhood Centres – scale and mix of proposal to accord with the role and function of the centre, focus on high quality design and public realm improvements, and an inclusion of a residential element;
- Section 12.8.3, Open Space Quantity for Residential Development – public open space (15% of site area) and communal open space (5sqm-9sqm, based on unit size) required, but for sites of less than 0.25ha consideration given to a development contribution in lieu of public open space provision and a relaxation in part or whole of communal open space provision; and

- Section 12.8.8, Financial Contributions in Lieu of Open Space – where the required open space cannot be achieved, a contribution in lieu of providing the full quantum of public open space will be required.

5.4.8. Appendix 5: Building Height Strategy outlines the policy approach to building height in different locations of the County (the appeal site is located in a ‘Residual Suburban Area’);

- Section 1.1 – changed approach to building height in the 2022 CDP from that of the 2016 CDP for residual suburban areas. Maximum heights and the use of upward and downward modifiers have been removed and replaced with a set of performance based criteria (Table 5.1) for the assessment of proposed developments for increased height;
- Section 4.4, Policy Objective BHS 3: Building Height in Residual Suburban Areas – promote a general building height of 3 to 4 storeys whilst balancing the reasonable protection of existing amenities;
- Proposals for ‘increased height’ and/ or ‘taller buildings’ in residual suburban areas are required to be assessed against the performance based criteria in Table 5.1; and
- ‘Increased height’ is defined as buildings taller than the prevailing building height in the surrounding area, and ‘taller buildings’ are defined as those that are significantly taller (more than 2 storeys taller) than the prevailing height for the area.

5.5. Natural Heritage Designations

5.5.1. The appeal site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA. There are no watercourses at or adjacent to the site.

5.5.2. The European Site designations in proximity to the appeal site include (measured at closest proximity):

- South Dublin Bay and River Tolka Estuary SPA (site code 004024) is c.2,963m to the northeast;
- South Dublin Bay SAC (site code 000210) is c.2,963m to the northeast;

- Dalkey Islands SPA (site code 004172) is c.4, 899m to the east; and
- Rockabill to Dalkey Island SAC (site code 003000) is c.5,100m to the east.

5.5.3. There are pNHA designations that align/ crossover with European Site designations above, including the:

- South Dublin Bay pNHA (site code 000210) is c.2,963m to the northeast; and
- Dalkey Coastal Zone and Killiney Hill pNHA (site code: 001206) is 2,855m to the southeast (most proximate point).

5.6. Preliminary Examination Screening for Environmental Impact Assessment

5.6.1. An Environmental Impact Assessment Screening report was not submitted with the application. I identify the following classes of development in the Planning and Development Regulations 2001, as amended, as being of relevance to the proposal:

- Class 10(b) relates to infrastructure projects that involve:
 - (i) Construction of more than 500 dwelling units,
 - (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere;
- Class 14 relates to works of demolition carried out in order to facilitate a project listed in Part 2 of Schedule 5 where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7 of the Regulations; and
- Class 15 relates to any project listed in Part 2 which does not exceed a quantity, area or other limit specified in that Part in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

5.6.2. Having regard to:

- The nature and scale of the proposed development (demolition of buildings (c.979sqm), and construction of a mixed use block (c.2,964sqm) including 20 apartments) on a site with an overall area of 0.27ha, which is notably below

the mandatory thresholds in respect of Class 10 Infrastructure Projects of the Planning and Development Regulations 2001, as amended;

- The nature of the proposed development as not being a project type that would give rise to waste, pollution or nuisances that differ from that arising from other mixed use developments in the receiving environment, or that would give rise to a risk of major accidents or risks to human health;
- The location of the site on lands that are zoned for neighbourhood centre and residential uses under the provisions of the Dún Laoghaire Rathdown County Development Plan 2022-2028, and the results of the strategic environmental assessment of the Dún Laoghaire Rathdown County Development Plan 2022-2028, undertaken in accordance with the SEA Directive (2001/42/EC);
- The location of the site within an existing built-up urban area, which is served by public infrastructure (including water and drainage services of Irish Water and Dún Laoghaire Rathdown County council , upon which the proposal would have marginal effects), and the existing pattern of neighbourhood centre, commercial, and residential development in the vicinity;
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001, as amended (including any designation protecting the landscape, natural or cultural heritage), the mitigation measures proposed to ensure no connectivity to any such sensitive location and, due to the absence of any ecological and/ or hydrological connection, the project not being likely to have a significant effect on any European Site;
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003); and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended;

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the

environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeals

6.1.1. The main issues raised in the first party grounds of appeal can be summarised as follows:

- Permission refused for one reason based on legal grounds and the ownership of the 'Legal Entitlement Area';
- Land ownership is not a planning matter, is not a justified reason for refusal, and the planning authority has acted ultra vires;
- Legal Entitlement Area comprises lands located directly in front of The Mart and the former grass verge in front of 1 and 2 Old Bray Road currently used for parking and the display of goods associated with commercial activities at The Mart;
- Legal Entitlement Area included in the planning application at the request of the planning authority so as to improve the public realm by creating a new plaza and redesigning the car parking for safety and amenity purposes as part of the proposed development;
- Legal Entitlement Area is not owned by the applicant but has been used and maintained by her family for over 50 years;
- Planning authority confirmed that the Legal Entitlement Area is not owned or maintained by the Council;
- Appeal contains a legal opinion, declarations (by applicant, applicant's brother, and a letting agent), and a revised proposal. The main points of which can be summarised as follows:

Legal Opinion

- Legal Entitlement Area is unregistered, the true owner, if any, is unknown, and there is a very high probability that the Area has been abandoned over time;

- No claim to the Area has been made in the 50 year period that the applicant and her predecessors in title have been in exclusive occupation and using the Area for the benefit of The Mart;
- Nobody is claiming any legal interest and entitlement to the Area as part of the application;
- Planning authority has knowledge of and involvement in previous works in and maintenance of the Area undertaken by the applicant and her predecessors;
- Applicant has established legal rights to the Area that include Adverse Possession (which does not require registration of interest in a property) and an Easement in the form of Rights of Parking;
- Case law has established that a grant of planning permission does not interfere with or override any person's legal right (common law or private law) to land under their ownership (i.e. in the unlikely event of the true owner of the lands being identified);
- A grant of permission would not interfere with any unidentifiable persons establishing a legal interest over the Area especially in circumstances where the Area is only being upgraded and not having its historic usage altered;
- Not the purpose of ABP or a by default a local authority to perform the function of being a definitive arbitrator on matters of legal title to land;
- Arguable that the Council has erred in refusing permission and questions the basis on which the Council's refers to 'a real and substantial risk' that the development would not be undertaken in accordance with a permission if granted;
- Council appears to have been influenced by objectors who raised land entitlement issues;
- Incorrect to do so as objectors have no claim of legal interest in lands, presented no credible facts to challenge the applicant's position (family business's use for 50 years), nor identified a true owner; and

- Applicant has demonstrated beyond reasonable doubt that they have legal entitlement over the lands.

Statutory Declarations

- Applicant grew up beside The Mart in 1 Old Bray Road (1980s) and witnessed use of Legal Entitlement Area for purposes associated with commercial activities and parking;
- Negotiated leases for various units which included use of the area at the front of the units and former grass verge for parking (copies of leases included in the appeal);
- Applicant and predecessors involved in the design, management, maintenance, landscaping, enforcement of customer parking in the Area for upwards of 50 years;
- Applicant's brother states during his ownership of The Mart (2005-2011) he had sole use of the forecourt, used for parking, deliveries, and display of goods, and maintained it; and
- Letting agent of commercial units of The Mart has seen/ been involved in drafting leases containing clauses in relation to the use of the forecourt and the sale of Christmas trees there from since the 1970s.

Revised Proposal

- If ABP does not accept that the applicant has demonstrated sufficient legal interest, the applicant has submitted a revised proposal with a red line development boundary omitting the Legal Entitlement Area and thereby the public realm works;
- Legal Entitlement Area and proposed works thereon are not integral to the scheme and the Board can grant permission for the proposed development without its inclusion; and
- Results in a change to parking provision at the front of the proposal onto Old Bray Road (four parallel spaces revert to existing 10 perpendicular spaces), while the residential element remains provided with parking spaces to the rear.

- Apart from the land ownership issue, the planning authority supported the scheme and accepted the proposed demolition of historic buildings, residential density, design and height, apartment mix and type, impact on residential and visual amenity of area, retail provision, open space and landscaping, traffic and transport, and ecological assessments.

6.2. Planning Authority Response

- 6.2.1. A response was received from the planning authority stating that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.

6.3. Observations

- 6.3.1. Six observations have been received on the appeal, and the main issues raised can be summarised as follows:

Nature, Scale and Design

- Proposal is an inappropriate redevelopment of this prominent landmark site;
- Unsatisfactory proposal in terms of uses, density, height and scale;
- Mass, scale and building height of the proposal is totally inappropriate in the context of the village;
- Proposal constitutes overdevelopment of the site;
- Design and density of the proposal fail to integrate with the surrounding built environment;
- Density of 120dph is excessive, a more appropriate density of 60dph achieved through halving the number of apartments;
- Proposal not in compliance with 2016 CDP Policy UD6 (building height strategy) and the upward modifiers (2016 CDP, section 4.8.1) do not apply to the proposal; and
- 5 storeys building height is out of character with the neighbourhood/ surrounding low-rise suburban residential development.

Retail Provision

- Proposal inconsistent with the NC zoning objective as the residential use is grossly disproportionate in terms of floorspace compared to the commercial use;
- Provision should be made for more mixed use neighbourhood centre facilities as a greater mix, range and type of unit is required;
- Proposal is not in compliance with 2016 CDP Policy RET2 (neighbourhood centres);
- Objection to the proposal replacing six smaller mixed use units with two retail units, one of which is a particularly large unit;
- Large retail unit likely to be a convenience store which is not necessary as there are a number of similar stores in the village;
- Large convenience store will require significant number of car parking spaces and will attract passing traffic from the N11; and
- Customers of the large convenience store will be car based not pedestrians as stated by the applicant.

Traffic and Parking

- Junction at Mart Lane and Old Bray Road is busy and dangerous, and proposal will worsen conditions and create further chaos;
- Proposal will generate significant amount of traffic which will result in dangerous conditions for pedestrians and vehicles and cause nuisance to locals;
- Insufficient number of car parking spaces for the scheme, particularly the retail uses;
- Totally inadequate provision of four spaces for staff, delivery trucks, and customers;
- Illegal/ nuisance overflow car parking will occur in the area especially in front of the houses along Old Bray Road;
- Local road network is already busy especially on Mart Lane to and from St. Brigid's primary school;

- Proposal will have a damaging impact on traffic management on Mart Lane with reference to the St. Brigid's School;
- Excessive scale of the proposal will attract considerable extraneous traffic, including during the construction phase, and cause overspill parking on Mart Lane;
- Parking overflow would even threaten the school's viability; and
- Proposal would create an excessive demand for public parking and St. Brigid's School will be put under great pressure.

Residential Amenity

- Proposal will seriously diminish the amenities existing and future residents due to its density, height, scale and massing;
- Significant overlooking will cause a loss of privacy of existing residences;
- Proposal overshadows houses on Old Bray Road and the Sunlight, Daylight, and Shadow assessment is insufficient to determine the extent of overshadowing;
- Nuisance to adjacent properties caused from noise and odours; and
- Proposal is in too close proximity to western property (Sequoia) and the shared boundary should increase from 2m to 3m high with vegetative screening.

Legal Entitlement

- No evidence of the purchase or transfer of the lands at the front of the shops and/ or the lands at the front of No.s 1 and 2 Old Bray Road (creche) to the applicant or her predecessors;
- Applicant's family apparently 'maintained' the grass verge landscape at the front of No.s 1 and 2 Old Bray Road (removed grass and paved same);
- Applying that same argument, owners of No.s 3-10 Old Bray Road have a legal entitlement to the grass verges in front of their properties as they maintain same;

- Rejection of ‘legal entitlement’ claim by applicant to lands at front of creche, and it should be reseeded and returned to grass verge;
- Applicant has only demonstrated ownership of 67% of the site area and the ‘legal entitlement area’ is a meaningless term;
- Legal opinion accompanying the first party appeal is unconvincing;
- Applicant has now ceded her right to the front areas along Old Bray Road in the first party appeal to allow consideration of the proposal;
- Disputes applicant’s assertion that the front area is now ‘not integral to the scheme’; and
- Applicant’s proposal in the first party appeal to proceed with a reduced area would promote a lower quality outcome.

6.4. Further Responses

6.4.1. No further responses have been received on the appeal.

7.0 Planning Assessment

7.1. Introduction

7.1.1. I have examined the application and appeal documentation on the case file, including the planning authority reports and submissions received from prescribed bodies, inspected the site, and had regard to the relevant national, regional, and local policies and guidance.

7.1.2. Observations received on the appeal ask the Board to both uphold the planning authority’s refusal of permission and to refuse permission more comprehensively for additional reasons. I have outlined the range of issues raised by observers in Section 6.3 Observations above and highlight to the Board that these issues are in addition to the grounds of the first party appeal which focuses specifically on addressing the refusal reason and the issue of title to the land.

7.1.3. Notwithstanding the very specific grounds of the first party appeal, I consider the main issues for the appeal to be as follows:

- Principle of Development;

- Nature, Scale and Design;
- Mixed Uses and Retail Provision;
- Traffic and Parking;
- Residential Amenity;
- Title to the Land; and
- Appropriate Assessment.

7.2. Principle of Development

- 7.2.1. As outlined above in Section 5.4 Local Planning Context, at the time the planning application was lodged and appeals made, the Dún Laoghaire Rathdown County Development Plan 2016-2022 (2016 CDP) was in effect. The application and appeal documentation both refer to policy in the 2016 CDP. In the interim, the Dún Laoghaire Rathdown County Development Plan 2022-2028 (2022 CDP) has come into effect and is the applicable CDP for the assessment of the appeal case.
- 7.2.2. I highlight to the Board that the site continues to be zoned for both neighbourhood centre and existing residential uses, and there are no new designations pertaining to the site or buildings therein (e.g. protected structures, architectural conservation area, tree preservation orders, protected views). The Building Height Strategy (Appendix 5 of the 2022 CDP) continues to promote developments with a building height of 3 to 4 storeys at locations such as appeal site, with taller buildings being subject to performance based criteria assessments.
- 7.2.3. In the 2022 CDP, the majority of the site (eastern portion) is zoned as 'NC' with the stated objective 'To protect, provide for and/ or improve mixed-use neighbourhood centre facilities' and the remainder of the site (western portion) is zoned as 'A' with the stated objective 'To provide residential development and improve residential amenity while protecting the existing residential amenities'.
- 7.2.4. The proposed development comprises a combination of retail and residential uses. With regard to the retail use, I am satisfied that, in terms of description, design and floorspace, the retail units (Unit 1: 489sqm and Unit 2: 69sqm) come within the 2022 CDP definition of 'shop – neighbourhood' as being 'one which primarily serves a local community and does not generally attract business from outside that

community. They will primarily serve a 'walk-in' population and will typically have limited carparking'. As such, the proposed land use classes are permitted in principle and/ or open for consideration under the 'NC' and 'A' zoning objectives.

7.3. Nature, Scale and Design

- 7.3.1. In Section 3.0 Planning Authority Decision of this report, I have outlined in detail the determination of the proposal at initial, SFI and CFI assessment stages by the planning authority. The planning authority sought and was satisfied with changes made to the northern elevation of the block involving a setback from the shared boundary and a reduction in building height. Observers to the appeal remain opposed to the proposal, describing it as inappropriate, unsatisfactory, overdevelopment, excessive, and out of character regarding its nature, scale, and design.
- 7.3.2. In terms of nature, the proposed development is a demolition and replacement scheme within a brownfield/ infill site. The existing buildings are traditional former rural farmhouses though, as confirmed at my site inspection, the buildings and their road-side setting have undergone significant alterations. I have reviewed the applicant's Architectural Conservation Assessment and concur with the findings that the buildings are in poor condition, do not contain historical material or features of architectural value, and their replacement is reasonable. I highlight that there are no 2022 CDP designations protecting the buildings and the planning authority did not object to their demolition. Due to the limited architectural heritage value of the buildings, I find their demolition to be acceptable and in compliance with 2022 CDP Section 12.3.9, Demolition and Replacement Dwellings.
- 7.3.3. The replacement of the buildings (commercial at ground floor, residential at first floor levels) facilitates the construction of new modern retail and residential floorspace. The appeal site is a brownfield/ infill site for which national (NPF, Sustainable Residential Development Guidelines, Apartment Guidelines), regional (RSES), and local policy (2022 CDP) requires consolidation of new development through denser and taller schemes. In terms of residential density, the proposal generates a net density of c.119dph. The site is an 'accessible urban location' (as per the Apartment Guidelines) which is appropriate for apartment development that can be large scale, high density of more than 45dph, and apartments-only in typology. There is no

policy context setting an upper limit for densities in such locations. I consider the proposed replacement scheme to be an appropriate form of development with a resultant acceptable residential density. The proposal ensures the more efficient and sustainable use of zoned and serviced lands, thereby complying with 2022 CDP Section 4.3.1.1, Policy Objective PHP18: Residential Density.

- 7.3.4. In terms of scale, the proposed development comprises a single building block with a building footprint occupying the majority of the site. The building lines of the block's eastern and southern elevations extend to the street/ footpath edges, and the northern elevation extends most of the length of the shared boundary. The building is set off the western boundary by c.15m, with this portion of the site accommodating the internal access road, surface car parking, and landscaping. The block has five floor levels and features a flat roof profile with building heights rising to between 3 storeys and 5 storeys. Observers raise concerns in relation to the scale of the block being an excessive and inappropriate scale, however I consider the scheme to be positively adapted to the site's topography with the lower ground floor level extending into the rising lands along Mart Lane, and the stepped building height reflective of the receiving environment and adjacent context. I also consider the layout of the block within the site and the scale of the building footprint to be acceptable, as these allow the eastern and southern elevations to extend to the street edges thereby creating a distinctive built form and strong public interface.
- 7.3.5. In assessing the appropriateness of the scheme's building height, specific consideration of the site's context is necessary. Observers object to the height differential between the proposal and the residences in the immediate vicinity, stating the scheme is out of character and fails to integrate. Following my site inspection, review of the case documentation, and intervening planning history, I consider the prevailing building height to be established by the predominance of 2 storey dwellings to the north and west, but also by the commercial 3 storey buildings to the south and southeast. I am also mindful of a new emerging context for the area, for example, by way of the SHD application granted permission c.100m to the southeast of the site which includes several blocks between 4 storeys and rising to 12 storeys.
- 7.3.6. Therefore, for assessment purposes, as the block is 3 storeys in height along the northern and western edges (next to the adjacent 2 storey and single storey properties on Old Bray Road and Mart Lane respectively), and 5 storeys in height at

the southeastern edge (proximate to the 3 storey commercial properties), I consider the proposal to be 2 storeys above the respective existing prevailing height. In this regard, the proposal is not in excess of 2 storeys of the prevailing height and therefore does not necessitate the performance based criteria assessment referred to in 2022 CDP Building Height Strategy, Section 4.4, Table 5.1. I consider that the proposal complies with the stipulations of the 2022 CDP Building Height Strategy and is therefore in compliance with 2022 CDP Section 4.4.1.8, Policy Objective PHP42: Building Design and Height and Section 4.4, Policy Objective BHS 3: Building Height in Residual Suburban Areas.

- 7.3.7. In terms of design, a streamlined architectural approach has been taken for the building with rectangular forms and slight modulations through the stepped building heights and staggered building lines/ edges at the different floor levels, a flat roof profile, simple elevational treatment of fenestration, entrances, balconies, and screening arrangements, and balanced use of external finishes (brick, metal cladding and panelling, glass for balconies, green roofs). In my opinion, the architectural design of the block is well considered, a modern expression of the mixed use block/ apartment typology, with high quality design details and finishes, and is acceptable. As such, I consider the overall design of the proposal to be in compliance with 2022 CDP Section 12.3.1.1, Design Criteria satisfying applicable policies and zonings, achieving urban design principles such as creating a sense of place and variety, and responding to context as a new architectural form for the site.
- 7.3.8. Finally, in the interests of clarity, regarding items not expressly raised in the appeal and/ or observations, I confirm to the Board that I have reviewed the relevant details, assessed the associated impacts, found the following items to be in order, and recommend that, in the event of a grant of permission, any issues arising (eg. implementation, final agreement with the planning authority) can be addressed by condition. These items include ecological, biodiversity and arboricultural impacts, building materials and finishes, landscaping and boundary treatments, internal road layout allowing future access to lands to the north, lighting plan, odour and noise impacts, water services, surface water and flood risk, and utilities, management company operated scheme, and Part V compliance.

7.4. Mixed Uses and Retail Provision

- 7.4.1. The proposed development comprises two uses, retail and residential, the former in the configuration of two separate units at street level (lower ground floor) and the latter in four upper floors of residential accommodation. The proposed mix of uses, the proportion/ ratio of floorspace of the uses, and the configuration of the new retail units were accepted by the planning authority, and not subject to any revision during the assessment of the application.
- 7.4.2. Observers to the appeal object to the loss of the existing smaller commercial units in The Mart. Observers are also critical of the proposed mix of uses in the scheme, stating the residential use is grossly disproportionate to the commercial use in terms of floorspace, and of the retail component of the scheme, stating that a large convenience unit is not necessary and that a greater mix of units should be provided offering a range of neighbourhood centre facilities.
- 7.4.3. With regard to the type and format of the retail floorspace, while I acknowledge concerns raised by observers in respect of the loss of the existing commercial units and the replacement of numerous smaller units with two units, one relatively large, there is no policy prohibiting same. Positively, I consider that the proposal facilitates the provision of modern retailing floorspace (the applicant's documentation indicates a potential convenience store and newsagents) that will complement, not compete with, the existing retail offer in Cornelscourt village, which is presently concentrated at a distance of c.500m to the southeast of the site.
- 7.4.4. With regard to the mix and proportion of the uses, I find these to be appropriate having regard to the configuration of the existing neighbourhood centre with ground floor commercial (retail, services) and residential at first floor level. The proposal maintains the combination of uses in principle, facilitating the sustainable Living over the Shop concept, thereby complying with 2022 CDP Section 12.3.7.9, Living Over the Shop. Additionally, I find that the proposal complies with the overriding strategy for new developments in neighbourhood centres, 2022 CDP Section 7.5.4.1, Policy Objective RET7: Neighbourhood Centres and 2022 CDP Section 12.6.1, Assessment of Development Proposals in Towns, District and Neighbourhood Centres, by providing a range of convenient and easily accessible retail outlets and services within walking distance for the local catchment population, being of a high quality design, incorporating public realm improvements, and including a notable residential component within the scheme.

7.4.5. In the event of a grant of permission, I recommend that conditions be attached restricting the use of the retail units to that of the legislative definition of 'shop', and requiring final agreement on shopfront design, signage, lighting, and waste management arrangements for each retail unit.

7.5. Traffic and Parking

7.5.1. Concerns relating to traffic and parking impacts associated with the proposal were raised extensively by third parties in submissions on the planning application, and are reiterated in the observations on the appeal. During the assessment by the planning authority, information was sought in respect of a Quality Audit (to review vehicular, pedestrian, and cyclist safety for the site access, internal road, and parking spaces), car and cycle parking standards, and a justification for the parking provision for the retail component. These items, involving relatively minor changes to footpath design, and car and cycle parking design and layout, were resolved to the satisfaction of the planning authority at SFI response stage. Otherwise, the planning authority did not cite any concerns regarding traffic generation, trip patterns or resultant impact on junctions and the surrounding road network, accepting the applicant's Transport Statement, predictions and management measures made therein.

7.5.2. Observers to the appeal raise objections to several traffic related aspects of the proposal including the volume of traffic generated, the adverse impact on the adjacent roads and junctions, described as already being busy/ chaotic, the creation of dangerous conditions for pedestrians, the scale/ type of retail attracting extraneous traffic to the area, the insufficient provision of parking/ set down area for the retail use, the resultant overspill and illegal parking on surrounding streets, with particular nuisance to Old Bray Road residents and threatening the viability of St. Brigid's national school located to west of the site on Mart Lane. I propose to address each item in turn below.

7.5.3. In respect of traffic generation and claims regarding the adverse impact on junctions and the road network, I have reviewed the Transport Statement submitted with the application which includes a traffic assessment with travel demand analysis and TRICS outputs. The estimated two-way vehicular trips for the proposal (retail and residential) generated in the AM and PM peaks are 80 and 116, and c. 100 two-way

pedestrian trips for each peak. These movements are dominated by retail related trips, comprising 74 and 110 of the vehicular trips of the AM and PM peaks. In the application documentation, the existing retail provision is indicated as c.483sqm with the proposal representing an additional c.75sqm. The traffic assessment makes assumptions in respect of the retail component including that the new retail floorspace would not generate more vehicular traffic than at present, that a high proportion of the vehicular trips visiting the retailers are passer-by/ linked trips not new destination trips, and that the movements are directly onto Old Bray Road (with the residential trips onto Mart Lane) which I consider reasonable. The residential trips (6 vehicular movements at each of the AM and PM peaks) onto Mart Lane and at the junction with Old Bray Road are not anticipated to have a detrimental impact on the carrying capacity or performance of either. Similarly, retail associated pedestrian trips dominate and the improvements to the footpaths along Mart Lane (2m) and Old Bray Road (new layout and paving) are anticipated to be sufficient to accommodate same. On balance, I consider the applicant's assumptions, analysis, and predictions to be reasonable, I note the planning authority accepted same, and that the observers have not provided any evidential traffic assessment to counter same. In this regard, I am satisfied that the proposed development will not generate unacceptable or excessive levels of traffic or have an adverse impact on the local network.

- 7.5.4. In respect of traffic safety, the Transport Statement submitted with the application included speed survey, visibility and DMURS analysis demonstrating that the proposed entrance on Mart Lane, internal road layout and parking spaces were appropriately designed and safe for all users. A Quality Audit was submitted at SFI response stage and an updated swept path analysis. The Audit identified changes to address potential safety issues including to footpaths (paving materials), site access/ road crossing points, drainage infrastructure, and on-street parking spaces design which were made to the scheme. The Audit's authors and applicant's traffic consultants submitted that the proposal represents an improvement on the current arrangement where drivers use undefined/ unmarked spaces (c.10 spaces, c.8 at the parade and two at creche) and vehicle movements require reversing from/ onto the Old Bray Road. Having inspected the site, witnessed the nature of these vehicle movements, and reviewed the associated documents, I accept the applicant's

position and concur with the planning authority that the proposal, as revised at SFI stage, would not constitute a traffic hazard or risk to public safety and represents an improvement on the existing parking/ deliveries layout on Old Bray Road.

7.5.5. In respect of parking provision, the site is located in Zone 2: Near Public Transport in the 2022 CDP and the proposal is subject to policy in Section 12.4.5.6, Residential Parking. The parking standards for Zone 2 are one space per 1 and 2 bedroom units, and 2 spaces per 3 bedroom units, which are reduced from those in the 2016 CDP. I calculate that the proposal has a car parking requirement of 32 spaces. This is comprised of 21 spaces for the residential component (19 spaces for the studio, 1 and 2 bedroom units, 2 spaces for the 3 bedroom unit, no specific quantum of visitor parking required), and 11 spaces for the retail component ($558\text{sqm} - 100\text{sqm} \times (*I \text{ am satisfied that } 100\text{sqm} \text{ can be offset from the total, allowing for the smaller retail unit}) = 458\text{sqm} / 40\text{sqm} = 11.45$). The proposal provides 26 spaces comprised of 22 spaces for the residential component (1 space per residential unit, and 2 visitor spaces) and 4 spaces for the retail uses (existing c.10 perpendicular spaces reconfigured as part of public realm improvements to 4 parallel spaces). There is a minor shortfall in parking provision of 1 space for the 3 bedroom apartment and seven spaces for the retail floorspace. I highlight that the retail parking requirement of 11 spaces is the maximum allowable provision.

7.5.6. Of the proposed parking provision, as the 2022 CDP does not require a specific quantum of visitor parking spaces in Zone 2, in the event of a grant of permission, I consider it appropriate for one of the two spaces so indicated be redesignated as an additional space serving the 3 bedroom apartment. With regard to parking provision for the retail use, while I note the concerns raised by observers, I consider that the number of spaces provided to be acceptable as I am satisfied that a flexible approach to standards, as allowed for under 2022 CDP Section 12.4.5.2, Application of Standards, can be applied to the scheme. This is because the proposal is a mixed use infill development (with a sustainable combination of residences above retail use), incorporates public realm improvements, is at a convenient and readily accessible location, close to public transport, and serving an established local residential catchment. Additionally, the requirement for 11 spaces is a maximum allowable provision. Therefore, in summary regarding parking, I am satisfied that the proposal accords with the 2022 CDP standards (Section 12.4.5.1, Parking Zones,

Section 12.4.5.6, Residential Parking), and comes within the scope of flexibility allowed for in the 2022 CDP regarding the provision of the retail spaces (Section 12.4.5.2, Application of Standards).

- 7.5.7. The cycle spaces provided (type, quantum, location) to serve the residential and retail components comply with the 2022 CDP standards and are satisfactory. In respect of cycle parking, 2022 CDP Section 12.4.6 defers to standards in ‘Standards for Cycle Parking and associated Cycling Facilities in New Developments’. For assessment purposes, I note that the standards remain the same between CDPs, and the proposal, providing 54 spaces in total is in excess of the respective requirements. These are calculated by the applicant as 32 spaces in total, comprising 8 spaces for the retail component (6 short-term spaces and 2 long-term/ staff spaces) and 24 spaces for the residential component (20 long-term spaces and 4 short-term/ visitor spaces).
- 7.5.8. In respect of potential overflow car parking, I have reviewed details in the initially lodged Transport Statement and the SFI Engineering Report. The former includes an outline mobility management plan with objectives for the for residents and/ or staff of the proposal (pedestrian, cycling, public transport, car sharing), and a framework construction traffic management plan with measures for parking for workers/ deliveries for contractors (parking within site boundaries, use of existing set down area on Old Bray Road). In the latter document, the applicant indicates that the tenant(s) will be made aware of the parking spaces and set down area availability, and that there will be engagement to ensure deliveries avoid peak periods of parking demand. I consider these traffic management measures, on finalisation with the planning authority, will be effective in minimising potential for overflow car parking as raised by local residents and St. Brigid’s national school. Further, the reasons the retail parking provision is acceptable also address concerns relating to potential overflow parking into adjacent streets. These include that the majority of trips are likely to be made by pedestrians within the local catchment, that vehicular trips are likely to be passer-by, non-destination, of short duration, and that if spaces are not available customers will likely go to another retailer which are in close proximity in the village. The applicant concludes that inappropriate parking associated with the proposal is likely to be negligible. This is accepted by the planning authority, and I concur.

7.5.9. In the event of a grant of permission, I recommend that conditions be attached requiring final agreement with the planning authority on a construction traffic management plan, a mobility management plan, taking in charge arrangements for the publicly accessible footpaths and on-street parking on Mart Lane and Old Bray Road, and for the design, layout, signage, and/ or control for the entrance, internal roadway, car, and cycle spaces.

7.6. Residential Amenity

7.6.1. Observers raise concerns in relation to the negative impact of the proposal on the residential amenity of existing residences, and also the poor amenity levels afforded to future residents of the apartments. I propose to address each item in turn.

Residential Amenity – Existing Residents

7.6.2. The adverse impacts on the residential amenity of adjacent residents raised by observers relate to potential overlooking, overshadowing, noise nuisance, and construction phase disturbance. Residential amenity was considered by the planning authority during the assessment of the proposal, with supporting information sought (daylight and sunlight assessment, screening and privacy measures, noise impact assessment, odour management plan, construction management plan) and changes to the design of the scheme (revised building height, building line set back from northern elevation, opaque windows indicated for all fenestration in the northern elevation, increased screening and planters along the edges of the open spaces, improved site boundary treatments walls and/ or vegetation).

7.6.3. In Section 3.0 above, I have outlined in detail the assessment by the planning authority which I have reviewed and considered. I confirm to the Board that I concur with the approach taken by the planning authority, the revised designs submitted by the applicant, and I am satisfied that the plans and particulars of the scheme as submitted for assessment at CFI stage include sufficient safeguards to protect existing residential amenity through preventing undue overlooking and loss of privacy, providing sufficient separation distances, protecting daylight and sunlight availability to properties, managing noise levels and the extent of disturbance, and controlling the degree of disruption associated with the construction phase of development. This is except for the requirement to use opaque glass in all windows

in the northern elevation which, following a review of the proposed floor plans, a consideration of orientation and extent of outlook, and increased separation distances between the elevation and adjoining northern properties, I do not consider necessary for apartments in the upper storeys of the second and third floor levels.

- 7.6.4. Through the documentation submitted with the application and the revisions made to the plans, I am satisfied that the applicant has sufficiently demonstrated that the proposal does not constitute overdevelopment, does comply with the building height strategy, does provide a buffer from rear garden boundary lines, and does incorporate a stepped back design in terms of height and massing from the outer building edges most proximate to the residences. I consider the proposal complies with 2022 CDP Section 4.3.1.3, Policy Objective PHP20: Protection of Existing Residential Amenity.

Residential Amenity – Future Residents

- 7.6.5. The proposal includes for 20 apartment units, comprising a mix of studio, 1, 2, and 3 bedroom units (see Table 2 above). I have reviewed the plans, particulars and schedule of accommodation submitted at SFI response stage and confirm the proposal meets and/ or exceeds all applicable standards and requirements of 2022 CDP Section 12.3.5, Apartment Development. In addition to offering a mix of unit types within the scheme, the proposal of apartments will contribute to the existing residential offer available in an area characterised by low density, detached dwellings and allow for varying household formations, thereby complying with 2022 CDP Section 4.3.2.3, Policy Objective PHP27: Housing Mix and Section 12.3.3.1, Residential Size and Mix.
- 7.6.6. Overall, as outlined in Section 7.3 of this report above, I consider the proposed development is of a design, layout, and scale, with communal and private amenity spaces that will provide a high standard of amenity for the future occupants of the scheme. Due to the orientation of the block, responsive and staggered building lines at each storey, sufficient separation distances from boundaries, and screening treatments, I do not anticipate any adverse or unduly negative impacts on the amenity of the apartments or on open spaces within the scheme due to overbearance, overshadowing, or overlooking.

- 7.6.7. Of relevance to the proposal, 2022 CDP Section 12.8.3 requires all new residential developments to contribute to open space. The contribution is 15% of the site area as public open space, in addition to a quantum of communal open space which is calculated on the basis of unit mix and bedspaces. Open space for the scheme comprises a podium garden at first floor level (236sqm) and a roof terrace at third floor level (122sqm), with a total provision of 358sqm. I highlight to the Board that the categorisation of the open space differs between the applicant's landscape architect's details (SFI and CFI landscape plans) and architect's details (SFI and appeal site layout plan) in respect of the podium garden at first floor level. The landscape plans indicate the podium garden as being 236sqm communal open space, while the site layout plan indicates the space as comprising a combination of 170sqm public open space and 66sqm communal open space. I have reviewed the plans and particulars on the case file, and I do not consider that the podium garden can be designated as a mix of public and communal open space. The manner in which the spaces are sufficiently separate or differentiated to serve the necessary and respective open space function is not apparent. Additionally, the applicant has indicated that the internal road and pedestrian access point to the podium garden of the scheme will not be taken in charge by the Council but will be under the control of a management company. As such I consider the open space within the scheme to be wholly communal for the use of the residents, maintained by, and under the control of the management company.
- 7.6.8. For open space contribution purposes, the proposed development generates a public open space requirement of 406sqm (15% of 2,708sqm; though I consider there to be merit in a calculation of 15% of 1,678sqm (i.e. the net developable site area) = 252sqm) and a communal open space of 129sqm (arising from the number of bedspaces). The proposal is provided with a total of 358sqm of open space, which I consider to be communal in nature, thereby satisfying the respective requirement. In this regard, there is a shortfall in the provision of public open space. 2022 CDP Section 12.8.3, Open Space Quantity for Residential Development and Section 12.8.8, Financial Contributions in Lieu of Open Space state that in instances where the required open space cannot be achieved, the applicant shall provide a contribution in lieu of providing the full quantum of public open space. As such, in the event of a grant of permission, I consider that a financial contribution can be

provided in lieu of the public open space not being provided. I recommend that the issue be addressed by way of a condition with the calculation of the shortfall (i.e. the quantum depending on site area) and payment of same to be agreed with the planning authority.

- 7.6.9. In the event of a grant of permission, I recommend conditions be attached safeguarding the amenity of adjacent properties, including obscure glazing for certain northern elevation windows, screening and planters to be as indicated in the open space, a construction management plan and hours of operation.

7.7. Title to the Land

- 7.7.1. The planning authority refused permission for the proposed development for one reason, that the applicant was not considered to have demonstrated sufficient legal interest in lands in the east of the site. The area, referred to as the Legal Entitlement Area includes the parking areas at the front of the shopping parade and 1 and 2 Old Bray Road. This is the main item raised in the first party grounds of appeal and addressing the refusal reason is the substantive consideration therein. The extent of the applicant's control over these lands was raised by the planning authority (documentary evidence was sought at FI and CFI requests), in third party submissions in the application, and in the observations on the appeal.
- 7.7.2. I have reviewed the information submitted by the applicant in the SFI and CFI responses, and in the first party appeal. These include correspondence from a solicitor confirming use of the parking area by the applicant and her predecessors in title for 50 years, land registry folio details of lands owned by the applicant, correspondence from a legal counsel, a statutory declaration from the applicant confirming use of the area by the applicant and her predecessors in title for 50 years, a legal opinion (on matters of land ownership and legal interest in planning law, role of the planning authority/ ABP in determining same, applicant's legal interest in lands is demonstrated though Adverse Possession), and statutory declarations from the applicant (further details/ elaboration on use of area/ establishment of entitlement, extent of planning authority's knowledge of the applicant's/ predecessors' entitlement to the area), applicant's brother (a previous owner, details on use and maintenance of the area, including of area to the front of 1 and 2 Old Bray Road), and a letting agent (on nature of commercial leases which included clauses regarding the use of

the area). I highlight to the Board that no documentary evidence or information has been submitted on the application or the appeal from third parties or observers to counter the position of the applicant or prove ownership of any part of the Legal Entitlement Area.

- 7.7.3. In considering the issue of legal interest in the Legal Entitlement Area, I have had due regard to the guidance in Section 5.1 of the Development Management Guidelines. The Guidelines are clear that '[t]he planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts', and refers to section 34(13) of the 2000 Act which states that a person is not entitled solely by reason of a permission to carry out any development.
- 7.7.4. The Guidelines outline three scenarios in respect of land title issues and planning assessments. Firstly, where a person asserts that they are the owner of the subject land, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter; secondly, if there are doubts as to the sufficiency of the legal interest, further information may be requested and only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis; and thirdly, in the event that some doubt still remains on receipt of the further information response, the planning authority may decide to grant permission as such a grant is subject to the provisions of section 34(13) of the Act. That being, the developer must be certain under civil law that they have all rights in the subject land to execute the grant of permission.
- 7.7.5. Following my review of the application and appeal documentation, in my opinion, the third scenario in the Guidelines is the appropriate course for determining the issue of legal interest in this appeal case. I consider that, while the applicant is not the owner of the area and the owner is unknown, the applicant has provided a range of documentary evidence demonstrating sufficient legal interest in the lands (details of which are I have outlined above). I am satisfied that, for planning purposes, the applicant has sufficient legal interest to claim a legal entitlement to the lands and include these within the wider site area, subject to the restrictions explicit in section 34(13) of the 2000 Act.

- 7.7.6. In the first party appeal, the applicant refutes the planning authority's position, as cited in the refusal reason, that the works to be undertaken in the Legal Entitlement Area are integral to the scheme. The applicant submits that the proposed public realm improvements are not essential, were incorporated into the scheme at the request of the planning authority, and that the existing areas can remain as are (i.e. footpath, on-street car parking, paved areas). To this end, the applicant proposes a revised scheme with an amended red line boundary which excludes the lands and omits the public realm improvements from the proposed development. If the Board is of the opinion that sufficient legal interest in the lands has not been demonstrated, the applicant invites the Board to grant permission for the amended scheme instead (subject to readvertisement).
- 7.7.7. In considering this matter, I concur with the applicant that the scheme could be considered with the Legal Entitlement Area and proposed works therein omitted. That being, I do not find the inclusion of the area and the undertaking of the works to be integral to the scheme per se (eg. the realigned on-street parking spaces and set down area are associated with the retail use, which the existing spaces would continue to serve). However, I consider the inclusion of the public realm improvement works, particularly the paving, seating and landscaping, to be desirable, preferable, and constituting planning gains to the receiving area. As I am satisfied that the applicant has demonstrated sufficient legal interest in the Legal Entitlement Area, I recommend that the lands and public realm improvement works, including the realignment of the on-street parking, remain in the scheme.
- 7.7.8. Finally on this issue, I highlight to the Board that the publicly accessible area along Mart Lane (footpath, roadway) included within the appeal site is controlled and maintained (but not owned) by the Council, as attested to in its letter of consent, agreeing to the lands being included within the overall site area. In the FI request, the planning authority sought taking in charge details for the proposal. The SFI response details submitted by the applicant, and subsequently accepted by the planning authority, indicate the publicly accessible areas along Mart Lane and Old Bray Road (footpaths, roadway and/ or on-street parking spaces) as being taken in charge by the Council. In my opinion, such an arrangement would afford the Legal Entitlement Area on Old Bray Road the same status as exists for the publicly

accessible area along Mart Lane. That being, the Council does not own this publicly accessible area but does maintain it thereby having control over it.

- 7.7.9. In the event of a grant of permission, I recommend that conditions be attached requiring final agreement with the planning authority on the design, layout and construction of the public realm works along Mart Lane and in the Legal Entitlement Area along Old Bray Road, and the areas to be taken in charge with the planning authority.

7.8. Appropriate Assessment Screening

- 7.8.1. Having reviewed the applicant's Appropriate Assessment Screening Report, and having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the absence of ecological and/ or hydrological connections, and the physical separation distances to European Sites, I consider the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

8.0 Recommendation

- 8.1. I recommend that permission be granted for the following reasons and considerations, and subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Dún Laoghaire Rathdown County Development Plan 2022-2028, to the 'NC' and 'A' Zoning Objectives of the site, and to the nature, scale and design of the development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate mixed use scheme with an acceptable quantum of retail and residential floorspace, would be an appropriate residential density, would respect the existing character of the area, would not seriously injure the residential or visual amenities of property in the vicinity, would not be prejudicial to public health, and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the significant further information plans and particulars submitted to the planning authority on the 2nd day of June 2021, and by clarification of further information plans and particulars submitted to the planning authority on the 28th 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The mitigation measures outlined in the Ecological Impact Assessment, Bat Fauna Survey, Tree Survey Report, Arboricultural Report, and other plans and particulars lodged with the application, as amended by the significant further information submitted to the planning authority on the 2nd day of June 2021, and/ or by clarification of further information submitted to the planning authority on the 28th day of July 2021 shall be carried out in full, except where otherwise required by conditions attached to this permission. Documentary evidence of the satisfactory completion of the mitigation measures shall be submitted to the planning authority for its written agreement.</p> <p>Reason: In the interests of wildlife and environmental protection.</p>
3.	<p>The use of the two retail units at lower ground floor level shall be within the definition of 'shop' in the Planning and Development Regulations, 2001, as amended.</p> <p>Reason: In the interests of clarity and to protect the amenity of the area.</p>

4.	<p>Details of external shopfront, lighting, security shuttering, and signage for the retail units shall be agreed in writing with the planning authority prior to occupation of the retail units.</p> <p>Reason: In the interest of the amenities of the area.</p>
5.	<p>Details of the materials, colours, and textures of all the external finishes to the proposed building and site boundary walls shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>Proposals for a development name, retail unit identification, and apartment numbering scheme with associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.</p> <p>Reason: In the interest of urban legibility.</p>
7.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas, or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
8.	<p>Windows in apartment units at the upper ground level and first floor level in the northern elevation of the block shall be fitted with permanent obscure glazing and/ or be high level in design.</p> <p>Reason: To prevent overlooking of adjoining property.</p>

9.	<p>Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority the following:</p> <p>(a) taking in charge arrangements for the publicly accessible areas (footpath, roadway, and/ or parking spaces) along Mart Lane and Old Bray Road;</p> <p>(b) final design, construction, and operation (signage) details of the on-street parking/ set down area on Old Bray Road; and</p> <p>(c) hard and soft landscaping proposals for the publicly accessible areas along Mart Lane and Old Bray Road.</p> <p>Reason: In the interest of orderly development.</p>
10.	<p>Operation of crane(s) during the construction phase shall be coordinated with, and a minimum of 28 days written notification prior to use shall be given to, the Air Corps Air Traffic Services, Department of Defence.</p> <p>Reason: To ensure the safety of aircraft operations at Casement Aerodrome and in the interests of public safety.</p>
11.	<p>Construction of the proposed 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.</p> <p>This plan shall include inter alia: details and location of site offices, staff facilities, site compounds, on-site parking facilities, storage locations (for plant, machinery, materials), intended construction practice for the development including noise and dust management measures, a construction traffic management plan with details on access arrangements, haulage routes, timing and routing details for deliveries and disposal trips, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, and directional signage, and off-site disposal of construction/ demolition waste and/ or by products.</p> <p>Reason: In the interests of amenity and public safety.</p>

12.	<p>Construction and demolition waste from the proposed development shall be managed in accordance with a Construction and Demolition Waste Management Plan, which shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.</p> <p>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 demolition and site clearance 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.</p> <p>Reason: In the interest of sustainable waste management.</p>
13.	<p>Site development and construction works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of properties in the vicinity.</p>
14.	<p>(a) The communal open spaces, including hard and soft landscaping, car and cycle parking areas and access ways, communal refuse/ bin storage and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.</p> <p>(b) Details of the management company contract, drawings/ particulars describing the parts of the development (including entrances, internal road, footpaths, communal open spaces and shared areas) for which the company would have responsibility shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.</p>

	<p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
15.	<p>i) The car and cycle parking spaces for the development shall be provided as indicated in the plans and particulars of the significant further information submitted to the planning authority on the 2nd day of June 2021, unless otherwise agreed with the planning authority;</p> <p>(ii) 22 car parking spaces and 46 cycle parking spaces shall be provided off-street at the rear of the block, and shall be assigned permanently for residential use and shall be reserved solely for that purpose. These residential spaces shall not be sold, sublet, utilised for any other purpose including for use in association with the retail units of the development hereby permitted. The car parking spaces shall be allocated as follows: 1 space to each studio, 1, and 2 bedroom apartment, 2 spaces to the 3 bedroom apartment, and 1 space to visitors. Details of the layout, marking demarcation, management of, and security provisions for these car/ cycle spaces shall be agreed in writing with the planning authority prior to commencement of development;</p> <p>iii) 4 car parking spaces and 8 cycle parking spaces shall be provided on-street (Old Bray Road) for retail use by customers, services, and deliveries associated with the retail units. Details of the design, layout, signage, management of, and security provisions for these car/ cycle spaces shall be agreed in writing with the planning authority prior to commencement of development; and</p> <p>iv) Prior to the occupation of the development, the developer shall submit a final Mobility Management Plan, which shall be in line with the outline Mobility Management Plan (inclusive of management measures) lodged with the application, to the planning authority for written agreement. This plan shall provide for incentives to encourage the use of public transport, cycling, walking, and carpooling by residents/ staff employed in the development, and to reduce and regulate the extent of parking demand for residents, visitors, retail customers, and retail deliveries. The Mobility Management Plan shall be implemented by the management company for</p>

	<p>the development with annual updates of same submitted to the planning authority for written approval.</p> <p>Reason: To ensure that adequate parking facilities are permanently available to serve the residential and retail units, to prevent inappropriate commuter parking, and to encourage the use of sustainable modes of transport.</p>
16.	<p>i) A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/ points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/ stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/ points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.</p> <p>ii) Electric charging facilities shall be provided for motorbike and bicycle parking, and proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development.</p> <p>Reason: To provide for and/ or future proof the development such as would facilitate the use of electric vehicles.</p>
17.	<p>i) The areas of open space, public realm (along Mart Lane and Old Bray Road), and site boundary treatments shown on the lodged plans and particulars shall be landscaped (hard and soft) in accordance with the Landscape Design Report and associated landscape masterplans submitted with the application, as amended by the significant further information submitted to the planning authority on the 2nd day of June 2021, and by clarification of further information submitted to the planning authority on the 28th day of July 2021 unless otherwise agreed with the planning authority. This work shall be carried out within the first planting season following substantial completion of external construction works.</p>

	<p>ii) All planting shall be adequately protected from damage until established. Any plants which are removed, damaged, diseased or die within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>iii) The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter their opinion on compliance with the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the proposed development.</p> <p>Reason: In the interest of visual and residential amenity, and to ensure the satisfactory development and maintenance of the areas and boundary treatments.</p>
18.	<p>Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management.</p>
19.	<p>Prior to commencement of development, the developer shall enter into water and/ or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
20.	<p>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.</p> <p>Reason: In the interests of visual and residential amenity.</p>
21.	<p>(a) A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation, and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority not later than 6 months from the date</p>

	<p>of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan. This shall be done for:</p> <ul style="list-style-type: none"> i) each retail unit and ii) each apartment unit. <p>(b) This plan shall provide for screened communal bin stores serving the residential apartments, the locations and designs of which shall be included in the details to be submitted.</p> <p>Reason: In the interest of amenity and to ensure the provision of adequate refuse storage in the development.</p>
22.	<p>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.</p> <p>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.</p>
23.	<p>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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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</p>

	<p>completion or maintenance 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.</p> <p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
24.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>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.</p>
25.	<p>The developer shall pay to the planning authority a financial contribution in lieu of the provision of public open space within the site, as provided for under Sections 12.8.3 and 12.8.8 of the Dún Laoghaire Rathdown County Development Plan 2022-2028, and in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement</p>

of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should pay a financial contribution in lieu of the provision of public open space within the site as a result of the infill nature and restricted size of site, and to comply with applicable Development Plan policy.

Phillippa Joyce
Senior Planning Inspector

15th September 2022