



An
Bord
Pleanála

Inspector's Report ABP 311586-21.

Development

Permission for development consisting of a 5 storey above ground floor residential building, totalling 6 storeys overall, at a height of 20.8m containing 19 apartments comprising of 3 no. studio units, 10 no. 1 bedroom units, and 6 no. 2 bedroom units all with private balcony concierge facilities, a communal meeting room at ground floor level of 56m² and a communal terrace at fourth floor level of 26.6m². Bin storage is provided at ground floor level as well as a 32-space secure bicycle parking area. The proposal also includes landscaping works and all associated site works.

Location

Peter Place, Dublin 2.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

3233/21

Applicant(s)

Berwick Properties Ltd.

Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Alan Philips Patrick and Sheila O'Shea.
Observer(s)	Simon Dorney
Date of Site Inspection	27 th September 2022.
Inspector	Brendan Coyne.

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1.0 Site Location and Description

1.1.1. The site is triangular in shape and comprises an undeveloped area between the housing development at Peter Place and a Luas track in Dublin 2. The Luas track runs along the west/south-western boundary, and an access road serving Peter Place runs along the northern boundary. There is a public footpath along the northern side of this access road, and a translucent screen flanks the Luas track. A stone wall defines a portion of the eastern boundary, which adjoins a raised brick bed with a tree and shrubs and a small, grassed area with a mature deciduous tree. The ground level of the site slopes downwards gently in an easterly direction. Peter Place is a residential development of 2-3 storey dwellings, arranged around an area of open space. A terrace of two-storey dwellings adjoins the south-eastern corner of the site. Vehicular access to Peter Place is via Albert Place West, where vehicles travel along and cross over the Luas track. Pedestrians can access the site from Adelaide Road to the north or Albert Place to the west. Adjacent development to the west comprises Harcourt Green, a 5-storey residential development, and the Hilton Hotel to the south-west. The Grand Canal is located c. 98.4m to the south and the Iveagh Gardens is located c. 270m to the north.

2.0 Proposed Development

2.1. Application as lodged to the Planning Authority on 29/07/2021.

Permission is sought for the construction of a six-storey residential building, with a height of 20.8m containing 19 no. apartments, consisting of the following:

- 3 no. studio units,
- 10 no. 1 bedroom units,
- 6 no. 2 bedroom units,
- all with a private balcony,
- concierge facilities,
- a communal meeting room at the ground floor level (56 sq.m.),
- a communal terrace at the fourth-floor level (26.6 sq.m.),

- Bin storage at ground floor level,
- Secure bicycle parking area providing 32 no. spaces.
- Landscaping works,
- All associated site works.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council GRANTED Permission for the proposed development subject to 18 no. Conditions. Noted Conditions include:

- C.2 Development Contributions - €101,494.20, in accordance with Dublin City Council's Section 48 Development Contribution Scheme.
- C. 3 Development Contributions - €38,000.00, in respect of the LUAS Cross City Scheme.
- C. 4 Development Contributions - €76,000.00 (€4,000 x 19 units), as a contribution in lieu of the public open space requirement.
- C. 5 Cash deposit/bond requirement to secure the satisfactory maintenance, completion and reinstatement of services/infrastructure currently in the charge of Dublin City Council.
- C. 6 Submit details of materials, colours and textures of all external finishes for agreement by the Planning Authority.
- C. 13 Requirements of the Council's Road & Traffic Planning Division, as follows;
- 13. The following requirements of the Council's Road & Traffic Planning Division shall be complied with:*
- a) i) No part of the development shall encroach upon the public road, Peter Place, by means of underbuild or overhang including façade projection or hard landscaping. The development shall be constructed wholly within the red line ownership boundary*

ii) A detailed site layout plan of the development incorporating topographical survey data demonstrating that the full development is contained within the red line ownership boundary shall be submitted to the planning authority for written agreement prior to commencement of the development.

b) Prior to commencement of development, and on appointment of a contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise management measures and off-site disposal of construction/demolition waste. The plan shall identify for deliveries and site compounds. The Construction Management Plan shall specifically address any points raised by TII and the Applicant shall liaise with DCC and TII during the construction process. A Mobility Management Plan for the construction phase shall be submitted and this should seek to reduce overspill parking onto Peter's Place.

c) Prior to the occupation of the proposed development, a Mobility Management Strategy shall be submitted to the planning authority for written agreement. The Strategy shall address the mobility requirements of future residents and shall promote the use of public transport, cycling and walking and the use of car club spaces. A mobility manager shall be appointed to oversee and co-ordinate the roll out of the Strategy. This shall include site specific measures to discourage overspill parking into Peter Place.

d) Any works to the footpath and road on Peter's Place to facilitate a potential pedestrian crossing will require to be agreed with the Traffic Advisory Group (TAG) prior to the commencement of development. All works shall be provided at the Applicant's expense.

e) Details of the materials proposed in public areas is required and shall be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division.

f) Prior to completion and occupation, an Operational Service Management Plan for the development shall be submitted to the planning authority for written agreement.

g) 32 no. cycle parking shall be provided. These shall be secure, conveniently located, sheltered and well lit. Key/fob access shall be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.

h) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.

i) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: In the interests of orderly development.

C. 14 Requirements of Transport Infrastructure Ireland regarding Luas infrastructure, as follows;

The following requirements of Transport Infrastructure Ireland shall be complied with

a) Prior to commencement of development details of proposed 'full height screens', which are proposed where windows and balconies are within the OCS exclusion zone, shall be submitted to TII for written agreement.

b) Prior to commencement of development details of the interface between the proposed piling and Luas infrastructure, with reference to the Luas embankment on the subject site, shall be agreed in writing with TII. Such details shall include the following, inter alia: i. An engineering assessment of the possible impact of the construction of the Development in terms of potential vibration and settlement to the Luas embankment'. ii. A subsequent vibration and settlement monitoring specification from the engineers that undertook the engineering assessment iii. A site survey on the existing foundations of the embankment will also be required to ensure there will be no clashes with the proposed piles and the existing Luas embankment foundations. iv. A monitoring

plan that is in accordance with the monitoring specification from a specialist monitoring contractor

c) The Luas operator/TII will require 24hr access to Luas infrastructure. Prior to the commencement of development, the developer shall enter into an access and maintenance agreement with TII, which shall be submitted as part of the Construction Management Plan as required hereunder.

d) Works are proposed to be carried out in close proximity to Luas infrastructure. The Applicant, developer or contractor shall ensure that there is no adverse impact on Luas operation and safety and will be required to apply for a works permit from the Luas Operator by virtue of the Light Railway (Regulation of Works) Bye-laws 2004 (S.I. number 101 of 2004) which regulates works occurring close to the Luas infrastructure in accordance with TII's 'Code of engineering practice for works on, near, or adjacent the Luas light rail system'.

e) All deliveries made to the development site, including during the construction and operational phase, shall be made to limit interference with Luas operations. Such works shall be subject to a permit from the Light Rail Operator and should be submitted as part of a Construction Management Plan as required hereunder.

f) In the event that any works which require the removal, temporary and final reinstatement of Luas infrastructure are to be undertaken outside of Luas operational hours, under system shutdown and Overhead Conductor System isolation, such works will require a Luas permit.

g) Proposed foul and surface water drainage shall not utilise, discharge, surcharge or share common outfalls with existing Luas infrastructure.

h) The developer shall be responsible for any loss of Luas revenue or any other costs associated with a suspension of passenger services, or alterations to the Luas infrastructure which may arise out of, or as a consequence of, the design, construction or the operation of the development by the developer, contractors, sub-contractors, their employees or agents or any other related party. Appropriate agreements between TII, Luas Operator and the developer shall be undertaken and completed prior to the commencement of development.

- i) i) *Prior to commencement of development, a Construction Traffic Management Plan including access to services, shall be submitted for the written agreement of the planning authority subject to the written agreement of TII. The Construction Traffic Management Plan shall identify mitigation measures to protect operational Luas infrastructure.*
- ii) *Prior to commencement of development, a Demolition and/or Construction Method Statement shall be submitted for the written agreement of the planning authority subject to the written agreement of TII. The method statement shall resolve all Luas interface issues and shall (i) identify all Luas alignment interfaces, (ii) contain a risk assessment for works associated with the interfaces, and (iii) contain mitigation measures for unacceptably high risks, including vibration and settlement monitoring regime if necessary. The method statement shall be in accordance with TII's 'Code of engineering practice for works on, near, or adjacent the Luas light rail system'.*
- iii) *Prior to the commencement of development, where Overhead Conductor System (OCS) poles and/or fixings are located on/or adjacent to the proposed development, the following plans and details shall be submitted for the written agreement of the planning authority subject to the written agreement of TII: (i) OCS pole protection and safety distances, and/or (ii) Existing, temporary and subsequent permanent fixings specifications/plans.*
- j) *The development shall ensure no risk of intrusion of people into the OCS danger zone via opening windows, maintenance, cleaning, balconies, or terraces. The danger zone is described in TII's 'Code of engineering practice for works on, near, or adjacent the Luas light rail system' defined by a 2.75m offset in all directions from the nearest item of OCS infrastructure.*
- k) *The developer shall be required to ensure any works including landscaping, planting and signage do not impede tram drivers' visibility of road junctions, associated signals or affect the footpath to the extent that pedestrians may walk into the swept path of oncoming trams.*

l) The proposed development falls within the area for an adopted Section 49 Supplementary Development Contribution Scheme - Luas Cross City (St. Stephen's Green to Broombridge Line) under S.49 Planning and Development Act 2000, as amended. If the above application is successful and is not exempt, please include a condition to apply the Section 49 Luas Line Levy.

Note: TII's 'Code of engineering practice for works on, near, or adjacent the Luas light rail system is available at <https://www.luas.ie/work-safety-permits.html>. The proposed development falls within an area set out in a Section 49 Levy scheme for Light Rail. The Section 49 scheme lists several exemptions where the levy does not apply. If the above application is successful and not exempt, as a condition of the grant please include for the Section 49 Contribution Scheme Levy

Reason: To ensure no adverse impact on Luas operation and safety

C.15 Requirements of Dublin City Council's Archaeology Department.

C. 16 Waste management requirements.

C. 17 Construction and demolition waste management requirements.

C. 18 Naming and numbering requirements.

3.2. Planning Authority Reports

3.2.1. Planning Report

3.2.1.1. Zoning:

- The site is zoned Z4: To provide for and improve mixed-services facilities.
- Residential is a Permissible Use in Z4 lands.

3.2.1.2. Density of development and urban form

- The site has a stated area of c. 447sqm.
- Indicative site coverage and plot ratio standards are set out in the Development Plan.
- Site coverage standards are 80% for Z4-zoned lands.

- Plot ratio standards are 2.0 for Z4.
- The site coverage for the proposed development is stated as 75%.
- The stated plot ratio for the development is 0.75.
- The proposed site coverage and plot ratio are below Development Plan standards.
- Development Plan Density Standards stated, as per Section 16.4.
- The Development Plan sets no actual upper unit density limit for any zoned lands, including Z4, with each proposal assessed on its own merits, as per the Development Plan's assessment criteria.
- Reference to the DoECLG's 2009 *Sustainable Residential Development in Urban Areas* re. density and efficiency of land use.
- Reference to the *Urban Development and Building Heights Guidelines* (2018) re. building heights and issues to be considered.
- SPPR1 and SPPR2 of the Guidelines stated re. building heights and mixture of uses, respectively.
- Reference to assessment criteria for buildings taller than the prevailing height in an area, as set out in Section 3 of the Guidelines.
- Reference to SPPR 3 of the Guidelines where a proposal complies with the criteria and how the Planning Authority may approve the development, even when specific objectives of the relevant development plan or local area plan indicate otherwise.
- The Development Plan allow a maximum height of up to 24m for a residential building in this area.
- The proposed block is 20.8 metres high and six storeys in height.
- The building is tiered and set down to 3 storeys along the eastern elevation.
- The Applicant has stepped the building away from the eastern boundary to create a shoulder height that is sympathetic to the adjoining residential site.
- The scheme should accord with the development management criteria in Section 3.2 of the "Urban Development and Building Heights Guidelines". Requirements stated.

- Reference to Section 16.7.2 of the Development Plan re. pre-existing height in low-rise areas.
- The Applicant states that building height is permitted up to 50 metres in the National Concert Hall Quarter under the Dublin City Development Plan.
- The Applicant has submitted a Visual Impact Assessment, which indicates the views of the proposed development from the surrounding area.
- The Visual Impact Assessment indicates that of the 16 viewpoints, view nos. 1-6 & 13 record no visible change. These represent more distant views.
- Closer viewpoints of the site from Adelaide Rd., the Luas Stop (View nos. 7 & 8), and the adjacent plaza (View nos. 10 and 14 a, b, c, & d) show a significant visual impact on the site. This dramatic change in scale is understandable given the site is empty and the proposal is a new building development.
- Given the significant increase in height to facilitate a modern 6-storey residential building within a 2/3 storey residential estate, there is some concern that a structure of this scale could be excessive.
- The previous proposal on the subject site, which was withdrawn under P.A. Ref. 3209/20, was for an 8-storey residential building. The proposal under the subject application is six storeys.
- The Applicant refers to several taller buildings in the local vicinity, such as Charlemont Exchange, the Clayton Hotel and the Viasat Europe at Charlemont Place.
- The subject site is relatively restrictive, located within a residential estate with predominantly 2/3 storey houses.
- Given the more commercial buildings built across the Luas Line immediately to the west of the proposed scheme, it is considered that the subject site is a transitional site which could potentially bridge the gap between the 2/3 storey houses to the north and east and taller commercial buildings to the west.
- The Visual Impact Assessment indicates the impact of the proposed development.
- A 6-storey building at this location may be appropriate in this instance.

- The Applicant proposes using selected dark brick at lower levels to articulate the setback of the façade and a red tone brick at upper floor levels.
- According to the Applicant, the use of red brick is consistent with the materiality of the surrounding context.
- The scheme proposes the use of varying tones and colours, including the use of steel railing for the balconies.
- The balconies on the western corner overlooking the Luas Line have balustrades, which continue to soffit, fully enclosing the balconies.
- The building includes extruded shrouds around the perimeter of selected windows as a design feature.
- The proposed materials are acceptable and likely to complement the surrounding urban context.

3.2.1.3. Residential Quality/Standards

- The floor areas of the proposed 3 no. Studio units, 10 no. 1 no. bedroom units and 6 no. 2 bedroom units comply with the requirements of the Sustainable Urban Housing: Design Standards for New Apartments, which requires a minimum floor area of 40 sq.m. for a studio apartment, 45 sq.m. for a 1 bedroom and 73 sq.m. for a 2-bed unit.
- Six of the proposed apartments are single-aspect, and thirteen are dual-aspect. 68% of the apartments are dual aspect. This accords with the Guidelines on New Apartments, which requires that a minimum of 33% of new apartments provide dual aspect.
- There are 3 no. north-facing single-aspect 1-bed apartments. These are acceptable given they overlook green space, and the Applicant has increased the floor space from a minimum of 45sqm to 53sqm as a compensatory measure.
- The private open space provision throughout the scheme in the form of balconies exceeds the minimum requirements specified in Section 16.10.1 of the Development Plan.

- The proposal provides communal open space in the form of a 26.2 sq.m. roof terrace on the fourth floor and 56 sq.m. communal indoor meeting areas on the ground floor.
- Given the proximity of the site to the Grand Canal, Iveagh Gardens and pending an agreement regarding a contribution to the Dublin City Council Parks Division, the deficit in the communal open space may be considered acceptable in this instance.
- Storage areas for each unit are above the minimum standards, as set out in the *Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities*, which requires a minimum storage space of 3 sqm for a studio and 1-bed and 5sqm for a 2-bed unit.
- The proposed bin store is on the ground floor adjacent to the lift. This location is within easy access of the apartments above and to the street.
- The proposed refuse storage space is considered acceptable.
- There are reservations regarding overlooking the neighbouring property, particularly views from the balconies to Apartment Nos. 5, 10 and 14 and the communal terrace space.
- The drawings indicate the provision of privacy screens to the balconies of Apt nos. 5 and 10, and perimeter landscaping to the communal terrace area to protect the neighbouring residents' amenities from noise pollution and overlooking.
- There are 3rd party concerns regarding the possible overbearing nature of the development and its impacts on nearby and adjacent existing houses.
- The proposal provided a series of setbacks along the eastern elevation, which is likely to soften the visual impact of the proposed scheme on the existing residents.
- Given the city centre location and its setting in a transitional zone between the taller buildings to the west and the low-rise dwellings within Peter Place, a six-storey development is acceptable and unlikely to have an overbearing impact on the existing residents.

3.2.1.4. Sunlight, Daylight and Shadowing Assessment

- A Sunlight, Daylight and Shadowing Assessment has been submitted to quantify the impact of the proposed development on the existing neighbouring houses in Peter Park.
- The Report evaluates the impact of the following:
 - Existing facing windows for;
 - Impact/Change for Sunlight – Vertical Sky Component (VSC)
 - Impact/Change for Probable Sunlight Hours – Annual APSH and Winter WPSH
 - Existing amenity areas for impact/change on Sunlight/Shadow
- The Assessment sets out the performance of the proposed scheme regarding;
 - Light distribution Average Daylight Factor ADF
 - Room depth – light consistency
 - Sunlight/Shadow on amenity spaces and balcony performance
- The houses within Peter Place are assigned into four groups, Group 1 West, Group 2 North, Group 3 East and Group 4 South, based on proximity within the estate.
- The results indicate that most windows pass the minimum skylight (VSC) of > 27% or 0.8 change limit except for Window no. 22 within Group 4 South.
- Window 22 is within a house, which is very close to the boundary of the application site.
- The Applicant addressed this issue by stepping back the scheme's massing from the houses to the east.
- Regarding APSH, the result indicates that all windows comply with the annual APSH for sunlight and all but 4 windows comply with the winter WPSH requirements.
- The Applicant states how it is reasonable to give more weight to annual sunlight availability than to the limited sunlight received in the winter, given the city centre location and open aspect of the site.

- Regarding the existing amenity spaces and the impact/change on sunlight/shadow, the results indicate that the proposal impacts only the front public space, and it is still well above the 50% requirement and shows only a nominal change ratio of 0.92.
- The proposed development complies with the requirements of the BRE Guidelines.

3.2.1.5. Roads & Traffic Planning Division:

- Access for vehicles is from Albert Place West.
- Vehicles / cycles cross the Luas track to access Peter Place and the application site.
- Pedestrian access can be gained from Adelaide Road or Albert Place West.
- Footpaths from both directions appear to be of acceptable width and standard.
- There is no public footpath to the front of the site.
- A setback at the entrance facilitates pedestrian access to the proposed development.
- It is unclear if a pedestrian crossing, as shown on the submitted drawings, can be facilitated in this location, and works would need to be agreed upon with the Traffic Advisory Group (TAG).
- Zebra crossings are generally not implemented in Dublin City Council.
- Works are required to be in accordance with the Construction Standards for Roads and Street Works in Dublin City Council.
- Works to the public road would be subject to the agreement of TAG and RMS, and this should be conditioned in the event of a grant of permission.
- From a review of the proposed floor and elevation plan, it is unclear if the front façade overhangs the public carriageway. This issue can be dealt with by way of Condition in the event of a grant of permission.
- Auto tracking of emergency and refuse vehicle movements does not account for current on-street car parking on Peter Place. However, there appears to be sufficient room for the necessary turning manoeuvres.

- The submitted Ground Floor Plan details a refuse storage area at ground floor level.
- The pedestrian setback at the entrance to the development could facilitate the temporary storage of refuse bins on collection days.
- No Operational Service Management Plan has been submitted.

3.2.1.6. Luas

- Conditions recommended by Transport Infrastructure Ireland (TII) should be attached to any consent.

3.2.1.7. Parking Provision

- The site is located within Zone 1 of Map J.
- Cycle parking is to be located in an enclosed area at ground floor level.
- External access is located in the southern cul-de-sac of Peter Place. There is also access internally at ground floor level.
- 32 no. cycle parking spaces are proposed, which is acceptable.
- The bike store plan referenced in the submission does not appear to have been submitted.
- There is no visitor cycle parking proposed. However, the constraints of the site are noted.
- No car parking is proposed.
- Given the number of units proposed and the site's location in relation to public transport, bike and car share schemes and employment zones, zero parking is acceptable in this instance.
- On-street parking within Peter Place does not appear to be part of a parking scheme and is, therefore, uncontrolled.
- The Transport Division have concerns with overspill parking. This issue has been raised by the residents of Peter Place within their third-party submissions.

- The contents of the Residential Travel Plan/ Mobility Management Plan (RTP/MMP) are noted, including the appointment of a Travel Plan Coordinator to manage the Residential Travel Plan.
- A revised RTP / MMP incorporating site-specific measures to discourage overspill parking into the existing Peter Place residential scheme should be conditioned in the event of consent.

3.2.1.8. Construction Management Plan (CMP)

- A CMP was submitted with the application.
- The Applicant states that the designated site access shall be determined by the main contractor in consultation with Dublin City Council, An Garda Síochána and Transport Infrastructure Ireland (TII).
- The plan notes that crossing the Luas track will be required and states that all deliveries must occur below the overhead cables.
- The hours of operation are not in line with DCC hours of operation for sites. This can be dealt with by way of Condition.
- The plan refers to areas for deliveries and site compounds. The plan is not specific in relation to these. This can be dealt with by way of Condition.
- TII standards would need to be taken into account in a revised CMP.

3.2.1.9. Appropriate Assessment

- A Stage 2 Appropriate Assessment is not required.

3.2.1.10. Environmental Impact Assessment

- Given the nature and scale of the development, an EIA is not required in this instance

3.2.1.11. Conclusion

- Grant Permission

3.2.2. Other Technical Reports

Transportation Planning Division - No objection subject to Conditions.

Drainage Division – No objection subject to Conditions.

Environmental Health Report - No objection subject to Conditions.

City Archaeologist Report - No objection subject to Conditions.

3.2.3. Prescribed Bodies

Transport Infrastructure Ireland: No objection subject to 12 no. Conditions.

4.0 Planning History

Appeal Site:

P.A. Ref. 3209/20 Application WITHDRAWN. Permission sought for development consisting of a 7 storey above ground floor residential building, totalling 8 storeys overall, at a height of 26.8m containing 24 apartments comprising of 5 no. studio units, 10 no. 1 no. bedroom units, and 9 no. 2 bedroom units all with private balcony, concierge facilities, a communal meeting room at ground floor level of 56m² and a communal terrace at fourth floor level of 34.43m². Bin storage is provided at ground floor level as well as a 24-space secure bicycle parking area. The proposal also includes landscaping works and all associated site works

Adjoining Site to the Southeast:

P.A. Ref. 3997/20 Permission GRANTED for the demolition of an existing brick and block wall and palisade fence within the curtilage of the house, No. 28 Peter Place, for vehicular access. Provision of hard standing for single car parking space adjacent to end of terrace house, accessible from Peter Place. Construction of a 2-metre high fence with an access gate enclosing the rear of the property.

5.0 Policy and Context

5.1. Development Plan

Dublin City Council Development Plan 2016-2022 is the statutory plan for the area. The following provisions are considered relevant:

Land Use Zoning: The site is zoned 'Zone Z4: District Centres' with the objective 'To provide for and improve mixed-services facilities'.

Adjoining land to the southeast in Peter Place is zoned 'Zone Z1: Sustainable Residential Neighbourhoods' with the objective 'To protect, provide and improve residential amenities'.

The site is located within the Strategic Development and Regeneration Area No. 18: National Concert Hall Quarter, as per Section 15.1.1.21.

QH1 To have regard to the DEHLG Guidelines on 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007), 'Delivering Homes Sustaining Communities – Statement on Housing Policy' (2007), 'Sustainable Urban Housing: Design Standards for New Apartments' (2015) and 'Sustainable Residential Development in Urban Areas' and the accompanying 'Urban Design Manual: A Best Practice Guide' (2009).

QH5 To promote residential development addressing any shortfall in housing provision through active land management and a coordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and under-utilised sites.

QH6 To encourage and foster the creation of attractive mixed-use sustainable neighbourhoods which contain a variety of housing types and tenures with supporting community facilities, public realm and residential amenities, and which are socially mixed in order to achieve a socially inclusive city.

QH7 To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

QH9 To require that larger schemes which will be developed over a considerable period of time are developed in accordance with an agreed phasing programme to ensure that suitable physical, social and community infrastructure is provided in tandem with the residential development and that substantial infrastructure is available to initial occupiers.

QH13 To ensure that all new housing is designed in a way that is adaptable and flexible to the changing needs of the homeowner as set out in the Residential Quality Standards and with regard to the Lifetime Homes Guidance contained in Section 5.2 of the Department of Environment, Heritage and Local Government 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007).

QH18 To promote the provision of high quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and within each apartment development, and ensuring that suitable social infrastructure and other support facilities are available in the neighbourhood, in accordance with the standards for residential accommodation.

QH19 To promote the optimum quality and supply of apartments for a range of needs and aspirations, including households with children, in attractive, sustainable, mixed-income, mixed-use neighbourhoods supported by appropriate social and other infrastructure.

QH20 To ensure apartment developments on City Council sites are models of international best practice and deliver the highest quality energy efficient apartments with all the necessary infrastructure where a need is identified, to include community hubs, sports and recreational green open spaces and public parks and suitable shops contributing to the creation of attractive, sustainable, mixed-use and mixed-income neighbourhoods.

Section 15.1.1.21 SDRA 18 National Concert Hall Quarter

Section 16.5 Plot Ratio

Section 16.6 Site Coverage

Section 16.7 Building Height in a Sustainable City

Section 16.7.2 Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development.

Section 16.10 Standards for Residential Accommodation

5.2. **National Policy / Guidelines**

National Planning Framework – Project Ireland 2040

Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy for the Eastern and Midland Region (2019)

Quality Housing for Sustainable Communities - Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020)

Urban Design Manual - A Best Practice Guide (2009)

Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (BRE2011).

Urban Development and Building Height Guidelines for Planning Authorities (2020).

Design Manual for Urban Roads and Streets (2019).

BRE' Site Layout Planning for Daylight and Sunlight' (2nd edition)

BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'.

BS EN 17037:2018 'Daylight in Buildings'.

5.3. **Natural Heritage Designations**

5.3.1. The nearest Natura 2000 European Sites to the appeal site are as follows:

- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approx. 3 km east of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approx. 3 km east of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Two third-party appeals against the decision of the Planning Authority were received from;

- Patrick and Sheila O'Shea of No. 28 Peter Place, Dublin 2.
- Alan Phillips and co-signees of No. 12 Peter Place, off Charlemont Street, Dublin 2.

Both appellants' grounds of appeal are summarised below.

6.1.2. Appeal by Patrick and Sheila O'Shea of No. 28 Peter Place, Dublin 2.

6.1.2.1. Site Notice / Procedural Issues:

- The site notice was erected on 28th July 2021. The last date for observation to Dublin City Council was the 1st September 2021. The documentation on file was not available to view until mid-August. This restricted the Appellants' ability to get professional advice to make a comprehensive observation.
- The Appellants were not notified within 3 days of the Planning Authority's decision. The late notification allowed the Appellants only five days to lodge an appeal to An Bord Pleanála. This restricted the Appellants' ability to get professional advice to make a comprehensive appeal.
- The Planning Authority Report fails to address the Appellants' original submission.

- The Planning Authority Report quotes extensively from the Developer's submission and accepts these as factual. The Developer's consultants' reports contradict the Planning Authority's report.

6.1.2.2. Impact of the previously proposed development on the site.

- There is no difference between the proposed development and the 6-storey development previously submitted on the site under P.A. Ref. 3209/20 (reduced from 8-storey in response to the Further Information request).
- The Chris Shackleton Consulting (CSC) report submitted under P.A. Ref. 3209/20 concluded that "any design on the site will impact the nearest house" (the Appellants house No. 28 Peter Place).
- According to the CSC study under P.A. Ref. 3209/20, the front rooms of the Appellant's dwelling would fail both the BER standard and the VSC with the proposed development in place. Both would be less than 27% and 0.8 times their former value.
- According to the CSC study submitted under P.A. Ref. 3209/20, the amount of skylight at No. 28 Peter Place will decrease, the area lit by windows will appear darker, and electric lighting will be required more frequently. This will impact the three front room windows of No. 28 Peter Place.
- The Planning Authority report under the subject application does not refer to how the Appellants' dwelling, No 28 Peter Place, will be thrown into darkness requiring electric lights for most of the day.

6.1.2.3. Sunlight and Daylight

- The Appellants' house, No. 28 Peter Place, is the property adjacent to the proposed development.
- The Chris Shackleton Consulting (CSC) report submitted under the subject application shows that every habitable room for all the houses in Peter Place will have reduced daylight because of the proposed development.

- The CSC report carried out a daylight test on one of the windows labelled 'window 22', even though there are 4 no. windows and a porch to the front of the Appellant's dwelling.
- The CSC report does not highlight that the Appellant's windows and porch failed the minimum skylight (VSC) requirement.
- The CSC report leaves the result of the test for 'Window 22' blank and does not state it failed the test, as it would for the three other windows and the porch window if the test were conducted on these windows.
- As a result of the proposed development, the Appellant's four windows and front porch window will have a VSC of 24, down from the current 34.1 VSC. According to the CSC study, this is a lower ratio of 0.71. This fails the BRE guidelines, which the CSC report relies on to support the proposed development.
- The CSC report omitted to state that if permission were granted for the proposed development, the occupants at house No. 28 Peter Place would notice a reduction in the amount of skylight, the area lit by their windows would likely appear gloomier, and electric lighting would be needed more of the time. This is a glaring omission in the CSC report.
- The CSC report under the subject application was consciously written to leave out sections in the CSC report submitted under P.A. Ref. 3209/20, which showed the real consequences of the proposed development on the Appellant's house.
- The Planning Authority report is incorrect in stating that "it would appear that the Applicant has attempted to address this issue by stepping back the massing of the scheme from the houses to the east".
- Under P.A. Ref. 3209/20 whereby the proposal was reduced to 6-storeys in response to Further Information requested, the Planner stated that "even if the design included either a 3 or 4 storey development along this elevation, the scheme would have a similar impact on Window 22".
- The Planner under the subject application made a serious error of judgement in stating that the Developer has attempted to address the issue. In contrast, under

P.A. Ref. 3209/20, the Planner stated that the stepping back had not alleviated the massive reduction of light to the 4 no. windows to the front of the Appellants house.

- The Board is referred to appeal ABP Ref. PL29S236607, whereby permission was refused for the proposed development on the grounds that the daylight of the existing houses would be diminished. The proposed development under this application comprised a first-floor extension to the No. 29 Pembroke Gardens, Ballsbridge, Dublin 4.
- Comments provided from the Planning Inspector report under ABP Ref. PL29S236607 regarding sunlight /daylight analysis.
- The levels of reduction of daylight on adjacent property under PL29S236607 were not as severe as the reductions under the subject application.
- The VSC of the Appellant's dwelling would be reduced from 34.1 to 24.2, a reduction of nearly 30%. This would affect all three rooms to the front of the house, one of which is a downstairs living area.
- The CSC report states that the Appellants will have to use electric lights for most of the day to make the rooms habitable.
- The Planning Authority report states that the proposed development complies with the requirements of the BRE Guidelines. However, the table in the CSC Report demonstrates that the BRE Guidelines are breached in relation to the four front windows of the Appellants' dwelling.
- Under Irish Constitutional law, homeowners have a right to light. Recent cases in Ireland and the U.K. have upheld this right.
- The Construction Management Report details the proposed removal of the existing translucent screen flanking the Luas tracks (pg. 17, S. 5.1). This translucent screen was put in as a condition for the planning of the Luas to ensure there would be no loss of light to the Appellants dwelling.
- The proposed 6-storey block, 20m high, will block any light to the Appellant's dwelling.
- There is no reference in the Planning Authority report to the translucent screen flanking the Luas track.

6.1.2.4. Overshadowing

- In the CSC report, calculations are made on the Impact to Vertical Sky Component (VSC).
- Reference to the document ' BRE_EC6_Daylight and shadowing_ a collection of BRE expert guidance on designing for daylight and sunlight, and shading of buildings', and guidance therein re. components of daylight reaching a reference point.
- As the rooms to the front of No. 28 Peter Place are north-facing, they receive nominal amounts of the 'sky component' due to the sun's path.
- Any reduction in this light source from the building of a six-storey building adjacent to No. 28 Peter Place would adversely impact the living conditions of residents in the property.
- The main source of light is via the 'externally and internally reflected component'.
- The Developer did not include any study for shadow plots from the proposed development and its effect on the Appellants and neighbouring dwellings.
- The previous application on the site submitted under P.A. Ref. 3209/20 included a CSC report which contained a shadow plot study for the proposed eight-storey development.
- The CSC report under P.A. Ref. 3209/20 provided shadow plots for the 21st March (Sept) for the proposed development and described how from 1300hrs onwards, the 'externally reflected component' entering No 28 Peter Place is reduced due to overshadowing, necessitating artificial lighting by the occupants. Furthermore, by 15:00 there is little or no 'externally reflected component,' i.e., almost complete overshadowing of the courtyard to the front of No. 28 and the other houses in the square. The Report stated that this would severely impact the occupants with artificial light required for most of the day and most of the year.
- The CSC report under P.A. Ref. 3209/20 stated that 'The reader can see that all shadow cast by this proposal are transient over a limited time and the impact is minimal'.

- The CSC report under P.A. Ref. 3209/20 shows that for the extended period of the day that the proposal is casting a shadow on the space to the north of No. 28 Peter Place and the other houses from 1300hrs onwards on the 21 March. This reduces the 'externally reflected component'. The cumulative impact of the proposed development impacts the dullness within the north-facing rooms significantly.
- The CSC report under P.A. Ref. 3209/20 describes how the Appellants house 'will be more gloomy and electrical light will be needed more of the time'
- It is recommended in the 'Site Planning for Daylight and Sunlight' document that Living Rooms should be prioritised when considering the impact of new developments.
- The CSC report under P.A. Ref. 3209/20 confirms that the Living Room on the ground floor of the northern elevation of No. 28 would be most impacted by the proposed eight-storey development. It is also the living room of the other houses in Peter Place. Furthermore, the Report states that this room will now 'appear colder, less cheerful and pleasant', reducing the occupant's quality of life.
- Considering the importance of the 'externally reflected component' in providing natural light to the rooms on the northern elevation of No. 28, overshadowing from the proposed development will have a severe impact on the levels of natural light presently enjoyed by the occupants of No. 28 Peter Place.
- There are similar outcomes for a 6-storey development
- The Developer should have included a Shadow Plot Study in the application
- A Shadow Plot Study was not included in this application because the results would have highlighted the massive loss of light to the north-facing windows in the houses in Peter Place and, in particular, the Appellant's house, No. 28 Peter Place.

6.1.2.5. Overshadowing of the rear of No. 28 Peter Place

- As per page 18 of the CSC report submitted with planning application P.A. Ref. 3209/20, the Shadow plots for 21st June show that there are 'proposed shadows which are additional to those cast by surrounding features' in the evening between 1800 and 1900 hrs onwards.

- This impacts the levels of natural evening light presently enjoyed by the occupants and would discourage one from using the outdoor amenity in the evenings during the summer months.
- This shadow plot is similar for a 6- storey building

6.1.2.6. Overlooking

- The balconies on Apartment Nos. 5,10, 14 and the roof terrace of the proposed development would directly overlook the Appellants' back and side garden.
- The Appellants' private outdoor space would be entirely visible from the balconies of the apartments, which would seriously devalue the property as a whole.
- The proposal would be detrimental to the privacy of the occupants of No. 28.
- The proposed louvred screens will not stop the residents from looking down into the Appellant's garden.
- In most developments seen by the Appellants, louvred timber screens have been removed by residents as they defeat the purpose of a balcony.
- The large roof terrace at level 4, which can accommodate more than 40 persons, would look directly down onto the Appellants rear and side garden
- Louvred screens are not provided on the roof terrace.
- According to the iAcoustics Study submitted by the Developer, it states, "this terrace is expected to be used by groups of people, particularly at evenings and weekends and will generate reasonable levels of noise at busy times".
- The proposal provides a glass balustrade around the terrace. This will not prevent residents from overlooking the Appellant's garden or reduce the noise levels. Such a communal terrace should not be permitted.

6.1.2.7. Access to Bicycle Shed

- The Appellants and Dublin City Council have not given consent for the demolition of the old railway stone wall within their ownership, respectively, running alongside the Appellants' dwelling to facilitate the construction of a red brick wall with a door to the proposed bicycle shed.

- The Appellants were granted permission to have a parking area to the side of their house.
- The Developer proposes to demolish the railway natural stone wall and erect an additional entrance to a bicycle shed across the public footpath, of which the Appellants' car will exit.
- The bicycle shed door would open onto the area where a car would be exiting the Appellant's driveway. This would enable over 40 pedestrians per day to pass over the Appellant's entrance. This would be contrary to the Appellants' permitted development, which requires no movement across their entrance for safety reasons.
- The Planning Authority report did not reference the Appellant's permitted development and its stipulation requiring that "no pedestrian movement could occur across the front of the site".
- Residents of Peter Place park their cars on the roadway, where it is now proposed that occupants of the proposed development would enter the bicycle shed.
- Currently, there is a large brick circular flower box adjoining the site, which is to remain as it is Dublin City Council property.
- Residents of Peter Place park their vehicles between the brick flower box and the pathway from No. 28 to No. 22 Peter Place.
- It would be impossible for people trying to enter the bicycle shed from its entrance as there is no room between the parked cars to bring the bicycles through the vehicles.
- The Planning Authority acknowledges that only existing Peter Place residents can use the limited parking spaces at Peter Place.
- The only way residents of the proposed development could use the bicycle shed from this side would be if residents of Peter Place were prohibited from parking on this side of the road, and if the Appellants were prohibited from using the parking space at the side of their home. One car is parked in the side entrance space right up to the wall where the Developer proposes to put gates to the bicycle shed. The other car is parked on the road.

- The Appellants have been parking their cars there for the last 16 years and have the legal right and planning permission to do so.
- It would be impossible for anybody to access the bicycle shed from this side of Peter Place as they would have to lift their bicycles over the residents' cars.
- The residents of the proposed development would have to use the alternative proposed entrance.
- Permission should not be granted to allow any entrance to the proposed development from No. 28 Peter Place or the demolition of the old railway natural stone wall, which is a feature of Peter Place.

6.1.2.8. Road / Traffic Issues

- There is no provision for car parking for residents in the proposed development.
- Currently, there is not sufficient parking for the residents of Peter Place.
- The Developer assumes that none of the residents of the proposed development (40 plus) will use a motor vehicle. However, this assumption is not sustainable.
- The Planning Authority addressed this issue by stating that this can be dealt with by having a Residential Travel Plan and a Travel Plan Coordinator to avoid any overspill of residents of the proposed development parking in Peter Place.
- There is no vehicular drop-off area in the proposed development. This would mean that drop-off can only take place on the narrow entrance to Peter Place, thereby blocking access to Peter Place.
- The Appellants question how the Developer can ensure that residents of the proposed development will not park their cars in car spaces presently used by the residents of Peter Place.
- There should be a provision in the proposal for a drop-off area for residents and delivery vans rather than vehicles having to stop and park on the narrow road leading into Peter Place.
- When vehicles exit Peter Place, residents must look left to see if a Luas train is coming down the hill from Charlemont Bridge. Residents of Peter Place have complained about the erection of hoarding by the Developer, which obscures the

vision of anybody exiting Peter Place. There have been a few near misses with cars exiting Peter Place and approaching Luas trams.

- The proposal incorporates the provision of a brick wall at the corner of the exit of Peter Place, which will extend back up the Luas line, replacing the translucent screening. This will obscure the vision of any vehicle exiting Peter Place. Any person exiting Peter Place in a vehicle would not be able to see a Luas tram coming down from Charlemont Bridge. The Council's Roads and Traffic Division has not addressed this traffic hazard even though it was brought to their attention.
- The proposed development should not obscure the vision of any person in a vehicle exiting Peter Place so that there is a clear sighting of the Luas trams coming down the hill from Charlemont Bridge.
- The proposed development would involve the residents exiting onto the road at Peter Place. The proposal provides a pedestrian crossing at the exit of the apartment building straight onto the road.
- The proposed development would be built adjacent to the road where no provision is made for a footpath alongside the building and the exit from the proposed development. This means that residents of the development would have to either walk on the road at Peter Place or immediately, when the resident exits the apartment block, come out onto the road and cross over to the footpath on the opposite side of the road.
- There is, at present, no footpath along the entrance to the site. This arrangement would be highly dangerous with vehicles passing in and out of Peter Place with people walking on the road, particularly at night.
- The proposal should provide a footpath alongside the entrance to the proposed development. The Planning Authority report considered that this hazardous issue can be dealt with by the Traffic Advisory Group (TAG) and Roads and Street Works of Dublin City Council.
- The Conditions imposed by the Planning Authority, requiring agreement with relevant Council Departments, bypass the residents of Peter Place.

- There is no parking provision for plant and trucks during construction, except to stop and park on the road entering Peter Place. This will result in Peter Place's residents' inability to enter or exit their homes until these trucks have unloaded.

6.1.2.9. Scale and Massing

- The majority of houses in Peter Place homes are two-story structures. The proposed 6-storey block is grossly out of scale with the existing houses.
- The larger buildings in the greater region, upon which the Developer relies to justify the proposed scale, cannot be relied upon because they are not dominated largely by two-story dwellings and are therefore not comparable.
- The proposed development would have an overbearing impact on the 2-storey dwellings in Peter Place.
- The CSC report entitled External Report Proposed Views of 2 (22-40) shows the proposed huge brick wall to be built right up against the Appellants' house at No. 28 Peter Place, as detailed on shots PM 14D and PM 14E. These show how the balconies of the proposed development would overlook the side and rear garden of the Appellant's dwelling.
- The CSC report refers to house Nos. 25 and 22 but does not address how the enormous brick wall built up against the Appellants house No. 28 Peter Place would take all their light and how the balconies would result in overlooking.
- The reports submitted with the application do not refer to the Appellants' dwelling, No. 28 Peter Place.

6.1.2.10. Site Plan

- There is a dispute between the Appellants and the Developer over the legal ownership of a portion of the land to the east of the Appellants' house, which has been in the Appellants' use for over 16 years. The application site map includes this section of land.
- The hoarding area and old railway natural wall are located on land owned by Dublin City Council and not the owner.

6.1.3. **Appeal by Alan Phillips and co-signees of No. 12 Peter Place**

- The proposal would have an environmental impact on the residents of Peter Place.
- There is overdevelopment in the area, including hotels, office development and apartment buildings.
- Concerns expressed regarding health and safety and how the site is very tight with little room to manoeuvre.
- The proposal will cause serious traffic issues.
- The proposed apartments have no parking facilities.

6.2. **Applicant Response**

6.2.1. The response received from RW Nowlan & Associates, Chartered Planning & Property Consultants, representing the Applicant, Berwick Properties Ltd., is summarised as follows;

6.2.1.1. Planning History and Development Plan policy

- Under P.A. Ref. 3209/20, the same Applicant lodged a planning application for an 8-storey building. This application was withdrawn, and no decision was made.
- The site is in an area zoned Z4: 'District Centres' in the Dublin City Development Plan 2016-2022.
- The site is located within the Strategic Development and Regeneration Area No. 18: National Concert Hall Quarter. Permitted building heights within this area are up to 50 metres. The proposed building is well within this height limit.

6.2.1.2. Environmental Impact

- The Appellant states that the proposed development would result in an environmental impact on the residents of Peter Place. However, it is not clarified what type of impact the Appellant refers to.

- A sunlight, daylight and shadow assessment study was carried out. This Report notes that the proposed development "has successfully been designed to limit the impact on existing buildings".

6.2.1.3. Overdevelopment of the Area

- Notwithstanding that the proposed development is higher than existing buildings in the vicinity, the plot ratio is 0.75, and the site coverage is 75%.
- Many buildings (constructed and permitted) in the vicinity of the site are of similar height or higher. These buildings are listed in the submitted Design Statement and include the Charlemont House Aparthotel and the Hilton Hotel Extension, both to the south of the proposed development.
- The Dublin City Development Plan states that for areas zoned Z4, the indicative plot ratio is :2, and the site coverage is: 80%. The proposed development is, therefore, within the acceptable range of development intensity for sites in this area.

6.2.1.4. Light Deprivation

- The Appellant submits that the proposed development would result in light deprivation to nearby houses due to the height of the proposed apartments. However, as is clear from the sunlight, daylight and shadow assessment study, no such impacts will result.
- The Report concludes that the proposed development generally complies with the recommendations of the relevant guidelines documents.

6.2.1.5. Health and Safety

- The Council's Roads Planning Division Report provides a detailed assessment of the access arrangements. It outlines no objection to the proposed development, subject to several conditions, imposed by the Planning Authority under Condition No 13.
- A number of additional conditions by Transport Infrastructure Ireland in relation to the operation of the Luas services, have also been attached to the planning

permission (Condition 14). The Applicant is happy to accept these conditions and is able to comply with them.

6.2.1.6. Lack of Car Parking Facilities

- The Appellant submits that the proposed development would cause serious traffic and parking issues as a result of the lack of car parking facilities to serve the proposed apartments.
- Having regard to the location of the site within the city centre and immediately adjoining a Luas line with a nearby stop, it is unlikely that any future resident would wish to own a car.
- The proposed development will have sufficient bike storage, is located within the city centre near a number of public transport modes, including the Luas and is adjacent to the main business district.
- Under the Design Guidelines for Apartments, where apartments are proposed in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances.
- The Roads Report notes that while a lack of car parking facilities to serve the proposed apartments is acceptable based on the location of the site, there is a concern about possible overspill of car parking to occur that might affect the spaces currently used by the residents in Peter Place. To avoid this, the Planning Authority has attached a condition requiring the Applicant to submit a Mobility Management Plan which shall include site-specific measures to discourage overspill parking into Peter Place.(Condition 13C). The Applicant is happy for the Board to attach such a condition.

6.2.1.7. Conclusions

- The proposed development does not constitute overdevelopment as it is within the acceptable range of development intensity for sites in this area.
- The proposed development generally complies with recommendations and guidelines in relation to daylight, sunlight and overshadowing impacts of new development on existing development.

- The proposed development will result in minimal additional car movements. The Road Planning Division of Dublin City Council has no objection to the proposed development.
- The proposed development will not have a negative impact on the health or safety of existing residents in the area.
- A Mobility Management Plan to be submitted under the terms of the planning permission will ensure that overspill of car parking as a result of the proposed development will be minimal.
- The appeal submission lacks any planning grounds on why the proposed development would be contrary to the proper planning and sustainable development of the area.
- An Bord Pleanála is requested to uphold the decision of the Planning Authority to grant planning permission.

6.3. Planning Authority Response

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

6.4. Observations

- 6.4.1. An observation was received from Simon Dorney of No. 114 Harcourt Green, Charlemont St. Dublin 2. Issues raised are summarised as follows;
- Substandard shadow analysis and a disregard for loss of light and privacy.
 - Flood Risk
 - Uncertainty regarding alternative build options, as detailed in the Construction Management Report.
 - Danger to the Luas OCS infrastructure from the open terrace.
 - Subsidence issues.
 - Ownership of land issues.

- Risk to the culverted river Stin and its possible aquafer.
- Excessive plot ratio.
- The scale, height and massing of the proposal and unacceptable brickwork finishes.
- Site notices were erected along the Luas track where it is illegal to walk along.

7.0 **Assessment**

7.1.1. I have reviewed the proposed development and the correspondence on the file. I am satisfied that the proposed development is acceptable in principle, in accordance with the zoning objective of the site. I note the Planning Authority was satisfied that the proposed development accords with relevant Development Plan policy and residential standards and is consistent with relevant government planning policy and guidelines. Having examined the application details and all other documentation on file and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. These issues are addressed under the following headings:

- Daylight and Sunlight Analysis
- Overlooking
- Access and Parking
- Access to the proposed bicycle shed
- Procedural Issues
- Appropriate Assessment.

These are addressed below.

7.2. **Daylight / Sunlight**

7.2.1. The proposed development comprises a 6-storey residential building with an overall height of 20.8 metres. The building's eastern elevation is stepped, with the primary

façade/building line consisting of three storeys and the upper three storeys set back 2.2 metres behind the primary facade. Further indentations are provided to the upper three storeys with a communal roof terrace at the south-eastern corner on the fourth floor and loggias/balconies serving apartments. The width of the eastern elevation at the ground, first and second storey level is 21.7m, 13.2m on the fourth floor, and c.13m on the fifth and sixth floors.

7.2.2. The Appellants object to the proposed development on the grounds that its height and proximity to the eastern boundary would adversely impact the residential amenity of No. 28 Peter Place by way of loss of daylight and sunlight to the habitable rooms to the front/north of this dwelling. Further details regarding these grounds of appeal are set out in Section 6.1.2 above. The Applicant contests these grounds of appeal, as detailed in Section 6.2 above. The Planning Authority, in its assessment of daylight, sunlight and overshadowing, considered the proposed development complies with the requirements of the BRE Guidelines.

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

7.2.4. The Applicant has submitted a Sunlight, Daylight and Shadow Assessment, prepared by Chris Shackleton Consulting, which relies on the standards in the following documents:

- Site Layout Planning for Daylight and Sunlight: A good guide to Practice (BRE 2011), and
- British Standard BS 8206-2:2008 Lighting for Buildings – Part 2 Code of Practice for Daylighting.

7.2.5. I have considered the reports submitted by the Applicant and have had regard to BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings - Code of practice for daylighting). I note and acknowledge the publication of the updated British Standard (BS EN 17037:2018 'Daylight in Buildings), which replaced the 2008 BS in May 2019 (in the UK), but that this updated guidance does not have a material bearing on the outcome of the assessment and that the relevant guidance documents remain those referred to in the Urban Development and Building Heights Guidelines.

7.2.6. In designing a new development, it is important to safeguard the daylight to nearby buildings. BRE guidance is intended for rooms in adjoining dwellings where daylight is required, including living rooms, kitchens, and bedrooms.

7.2.7. Tests that assist in assessing this potential impact, which follow one after the other if the one before is not met, are as noted in the BRE Guidelines (Fig. 20):

- (i) Is the separation distance greater than three times the height of the new building above the centre of the main window (being measured); (i.e. if 'no' test 2 required).
- (ii) Does the new development subtend an angle greater than 25° to the horizontal measured from the centre of the lowest window to a main living room (i.e. if 'yes' test 3 required).
- (iii) Is the Vertical Sky Component (VSC) <27% for any main window? (i.e. if 'yes' test 4 required).
- (iv) Is the VSC less than 0.8 the value of before ? (i.e. if 'yes' test 5 required)
- (v) In room, is area of working plan which can see the sky less than 0.8 the value of before ? (ie. if 'yes' daylighting is likely to be significantly affected)

7.2.8. The above noted tests/checklist are outlined in Figure 20 of the BRE Guidelines, and it should be noted that they are to be used as a general guide. The document states that all figures/targets are intended to aid designers in achieving maximum sunlight/daylight for future residents and to mitigate the worst of the potential impacts for existing residents. It is noted that there is likely to be instances where judgement and balance of considerations apply.

7.2.9. Applying the criterion above of the proposed development to the closest residence, No. 28 Peter Place, reveals the following:

(i) The separation distance is less than three times the height of the new building above the centre of the main windows to the front of No. 28 Peter Place. The separation distance between the proposed development at its south-eastern corner and No. 28 Peter Place is 2.3m. The height of the proposed development at its south-eastern corner, at 4th floor level, is 10.7m. The overall height of the proposal along its east-facing elevation is 20.8m.

(ii) The proposed development does not subtend at an angle greater than 25° to the horizontal measured from the centre of the lowest window to a main living room. The proposed development is not located directly opposite the front/north-facing elevation of No. 28 Peter Place. However, the proposal obstructs the sky's hemisphere from the subtended plane. With this regard, the Applicant has submitted a Sunlight, Daylight and Shadow Assessment, prepared by Chris Shakleton Consulting. This Assessment evaluates the potential impact of the proposed development on the neighbouring residential houses in Peter Place and tests existing facing windows for (a) impact/change for skylight - Vertical Sky Component – VSC and (b) impact/change for probable sunlight hours - Annual APSH and Winter WPSH. The Assessment also tests existing amenity spaces for impact/change on sunlight/shadow. The Assessment notes that since the facades on private properties in Peter Place have not been directly surveyed, the Assessment followed the guideline recommendations and analysed points at 1.6m AGL, which corresponds to the centre point of a typical ground floor window.

The Assessment acknowledges that all windows pass the minimum skylight (VSC) requirements >27% or 0.80 change limit, with the exception of window No. 22, which relates to the north-facing window to the front of No. 28 Peter Place. The

Assessment states that "*Window 22 has a lower ratio of 0.71, however, it still receives a high degree of skylight 24% VSC. The window is tight to the boundary of the application site, which limits the access skylight. This high level of skylight is unexpected in a city environment, especially at ground floor level*". Furthermore, the Study states that "*light to this window is also currently reduced by tree planting in the adjacent green space and the site fencing*".

7.2.10. Having regard to the foregoing and the context of the site, I consider that daylighting of neighbouring dwelling No. 28 Peter Place and other dwellings within Peter Place would not be significantly impacted. Vertical Sky Component (VSC) is a 'spot' measure of the skylight reaching the mid-point of a window from an overcast sky. It represents the amount of visible sky that can be seen from that reference point, from over and around an obstruction in front of the window. That area of visible sky is expressed as a percentage of an unobstructed hemisphere of sky, and, therefore, represents the amount of daylight available for that particular window. As it is a 'spot' measurement taken on the outside face of the window, its shortcoming is that it takes no account of the size or number of windows serving a room, or the size and layout of the room itself. In this instance, the proposed development is not located directly opposite the front elevation of No. 28 Peter Place, and the potential for good daylight to the dwelling will remain. Furthermore, the VSC analysis does not take into account that there are four windows to the front of No. 28 Peter Place and that this dwelling is dual aspect with a south-facing rear elevation.

7.2.11. For existing buildings, the BRE Guidelines are based on the loss of VSC at a point at the centre of a window, on the outer plane of the wall. The BRE guidelines state that if the VSC at the centre of a window is more than 27% (or if not, then it is more than 80% of its former value), then the diffuse daylighting of the existing building will not be adversely affected. However, as evidenced by the diagrams in the BRE Guidelines, I note that the 27% VSC target value is derived from a low-density suburban housing model. The BRE Guidelines state in paragraph 1.6 that its target values are purely numerical and that different criteria may be used in special circumstances, such as in an area with high-rise buildings where a higher degree of obstruction may be unavoidable. In this context, I am satisfied that daylighting conditions in city locations would logically differ, and there would be a lower expectation for daylight levels than in less built-up areas. This is in consideration of the need for higher density

development in city locations and in light of the context of the current site, which allows for buildings up to 50 metres in the National Concert Hall Quarter in which the site is located, as per Section 16.7.2 of the Dublin City Council Development Plan 2016-2022. Therefore, in my view, it is expected that the proposed development would not adversely impact existing properties' daylight levels. As per Section 1.6 of the BRE Guide, "the advice given here is not mandatory and the guide should not be seen as an instrument of planning policy; its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design".

7.2.12. Regarding Sunlight, Section 3.2.11 of the BRE Guidelines states that "If a living room of an existing dwelling has a main window facing within 90° of due south, and any part of a new development subtends an angle of more than 25° to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected. This will be the case if the centre of the window:

- receives less than 25% of annual probable sunlight hours, or less than 5% of annual probable sunlight hours between 21 September and 21 March and
- receives less than 0.8 times its former sunlight hours during either period and
- has a reduction in sunlight received over the whole year greater than 4% of annual probable sunlight hours.

7.2.13. The Sunlight, Daylight and Shadow Assessment submitted tests adjacent properties for the amount of sunlight that windows to living rooms and/or conservatories can receive over both annual and winter periods. The test results find that all tested windows pass the requirements for living rooms for the Annual APSH sunlight hours and that all but 2 no. windows comply with the Winter WPSH requirements. The Assessment states that "*some (2) windows of Group 1 (1&2) while fine for annual sunlight APSH drop just below the winter WPSH requirements. Given the city centre location and the particular open aspect of this existing site, this is not unexpected. The availability of winter sunlight and how applicable this test is in a city centre environment is often called into question. With competing objectives to increase height and density it is more reasonable to give greater weight to Annual sunlight availability than to the*

limited sunlight which can be received in the winter". The stated average change ratio for Annual sunlight is 0.87, and the average APSH ratio is stated as 0.90.

7.2.14. Given that all windows tested within Peter Place pass the requirements for living rooms for Annual APSH sunlight hours and that the stated average APSH ratio is 0.90, and in the absence of evidence to demonstrate otherwise, I am satisfied that the proposal generally complies with the BRE guidelines. Section 3.2.8 of the BRE Guidelines states that "the guidelines are purely advisory. Planning authorities may wish to use different criteria based on the requirements for sunlight in particular types of developments in particular areas. Sometimes a larger reduction in sunlight may be necessary if new development is to match the height and proportion of existing buildings nearby".

7.2.15. In consideration of the above, I am satisfied that the form, massing and height of the proposed development would not significantly affect the daylight and sunlight of adjacent property. Any infringements of the BRE guidelines regarding daylight and sunlight are minor and justified given the context of the site in Dublin city centre and its fulfilment of a key objective of the National Planning Framework that "greatly increased levels of residential development in our urban centres and significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels", as per Section 1.20 of the Urban Development and Building Heights Guidelines for Planning Authorities (2018). On this basis, I recommend that the proposed development is not refused permission on these grounds of appeal.

7.3. **Overlooking**

The Appellants object to the proposed development on the grounds that it would result in overlooking the adjacent property, No. 28 Peter Place. Specifically, the Appellants express concern that the balconies of Apartment Nos. 5,10, 14 and the communal terrace at the fourth floor level of the proposed development would overlook the side and rear garden of No. 28 Peter Place. The Appellants contend that the proposed louvred screens would not prevent overlooking and that residents frequently remove such screens. Furthermore, the Appellants are concerned that the roof terrace on level

4 is enclosed by a glass balustrade and can accommodate forty individuals, resulting in overlooking and noise impact on No. 28 Peter Place.

- 7.3.1. The Planning Authority, in its assessment, noted the provision of privacy screens to the balconies of Apt Nos. 5 and 10 and perimeter landscaping to the communal terrace area on the fourth floor to protect the amenity of neighbouring property from overlooking and noise pollution.
- 7.3.2. The southern building line of the proposed residential block extends c. 1.2m behind the front building line of house No. 28 Peter Place. This southern corner of the proposed building provides a bike store at ground floor level, with the provision of an access double door opening to its eastern elevation. All window opes on the eastern elevation at upper floor levels of the proposed development are located forward of the front building line of house No. 28 Peter Place. Given that these window opes are not directly opposite window opes of nearby adjacent property and are located to the front of dwellings in Peter Place, I consider that these east-facing window opes of the proposed development would not result in overlooking of adjacent property in Peter Place.
- 7.3.3. The Apartments at the south-eastern corner of the proposal provide 'loggia' balconies at the first, second, third and fifth-floor levels and a communal terrace area (25.6 sq.m.) on the fourth floor. The Planning Report submitted with the application, prepared by RW Nowlan & Associates, states under Section 8.6 that all balconies on the elevation in close proximity to the existing dwellings in Peter Place will be fitted with an angled vertical louvred screen to restrict overlooking to the front of these dwellings and that such screen will permit light and ventilation onto the balconies. These are detailed on the plans submitted. Having regard to (i) the location of these balconies c. 1.2m behind the front building of No. 28 Peter Place, (ii) the absence of window opes serving habitable rooms on the side elevation of No. 28, and (iii) the proposed angled vertical louvred screens and (iv) the setbacks from the eastern elevation at fourth, fifth and sixth floor levels (as detailed above), it is my view that the proposed 'loggia' balconies at the south-eastern corner of proposed apartment block would not result in overlooking of neighbouring dwelling No. 28 Peter Place. Concerns raised regarding noise and anti-social behaviour from the fourth-floor communal terrace causing possible impairment of residential amenities of adjacent property are dealt with under

separate legislation outside the planning code. On this basis, I recommend that the proposed development is not refused permission on these grounds of appeal.

7.4. Access and Parking

- 7.4.1. The Appellants object to the proposed development on the grounds that there is no provision for resident parking in the proposed development and that there is currently insufficient parking for Peter Place residents. Specifically, the Appellants raise concerns that the proposal does not provide a service delivery and vehicular drop-off parking area, which would impact vehicular access to Peter Place and cause on-street parking. The Appellants also raise concerns about the proposed brick wall at the corner of the exit of Peter Place, which will extend along the Luas line, replacing the existing translucent screening. The Appellants contend that this would obscure vehicular visibility when exiting Peter Place and cause potential traffic collision with on-coming Luas vehicles. Furthermore, the Appellants are concerned that the proposal does not include a footpath along its roadside frontage, requiring pedestrians to exit the apartment building directly onto the road and then cross to the path on the opposite side. The Appellants contend that this would create a hazard for pedestrians and vehicles entering and exiting Peter Place. The Appellants also raise concerns that there is no provision for parking during construction and that the Conditions imposed by the Planning Authority, requiring agreement with relevant Council Departments, bypass the residents of Peter Place.
- 7.4.2. The Applicant contests these grounds of appeal, as detailed in Section 6.2 above. The Planning Authority, in its assessment, notes that there is no public footpath to the front of the site and that the proposal provides a setback at the entrance to facilitate pedestrian access to the proposed development. The Planning Authority acknowledge that it is unclear if a pedestrian crossing, as shown on the drawings submitted, can be facilitated at this location and that works would need to be agreed upon with the Council's Traffic Advisory Group (TAG). The Planning Authority notes that zebra crossings are generally not implemented in Dublin City Council and that any works would need to be in accordance with the Construction Standards for Road and Street Works in Dublin City Council and that any works to a public road would require TAG and Road Maintenance Division (RMS) approval. The Planning Authority notes that the submitted auto-tracking of emergency and refuse vehicle movements do not

account for Peter Place's existing on-street parking. However, according to the Planning Authority, there appears to be sufficient space for the required turning manoeuvres. These comments generally confirm the Council's Transportation Planning Division report, which concluded that it has no objections to the proposed development subject to conditions. These were imposed under Condition Nos. 13 and 14 of the Planning Authority's grant of permission - refer to Section 3.1 above.

7.4.3. The Applicant has submitted with the application a Residential Travel Plan / Mobility Management Plan prepared by CORA Consulting Engineers. The Report provides a rationale to support the proposed car-free development. Key details in this Report include the following:

- There is no parking provided for the proposed residential development.
- The proposal provides 50 No. cycle parking spaces.
- A Travel Plan Co-Ordinator {TPC} shall be appointed to provide ongoing management for the Residential Travel Plan (RTP).
- In conjunction with the on-site management team, the TPC will prepare a document detailing the progress of the Travel Plan and the Strategy for its future development.
- The benefits to residents of the proposed development and the wider community will include the following:
 - Reduced traffic congestion on roads,
 - Reduced harmful impacts on the environment arising from vehicular traffic on the local road network.
 - The promotion of less environmentally intrusive forms of travel, such as walking and cycling.
 - Improved air quality and minimised greenhouse gas emissions due to reduced traffic growth and congestion and an increased choice of more sustainable modes of transport.
 - Reduction in the harmful effects to existing biodiversity and the built environment as a result of reduced traffic growth

- Improved health due to less pollution from vehicles and the take up of more active modes of travel, such as walking and cycling
- Financial savings from the take up of less costly alternatives of travel, such as walking or car sharing.
- Safer communities through reduced number of accidents and other incidents.
- Improved sustainable access to local services, facilities and the natural environment, such as open spaces and green corridors for non-motorised forms of transport
- Reduced social isolation as a result of extended or new public transport services, resident walking/cycling groups, resident travel forums and building links with the wider community

7.4.4. The Residential Travel Plan / Mobility Management Plan provides a detailed case for zero car parking provision with reference to the following:

- Dublin City Council Development Plan car parking standards.
- Recommendations in The Sustainable Urban Housing; Design Standards for New Apartments (Guidelines for Planning Authorities, 2018).
- Projected car usage in general proximity to the proposed development.
- Modal split for the private car – 2016 Census results for electoral districts in the vicinity of the proposed development.
- Relevant national/international and local policy on sustainable travel.
- The road network, public transport, walking and cycle facilities and commuter travel patterns in the vicinity.
- Predicted post-development travel patterns.

7.4.5. A Travel Plan Strategy is provided outlining objectives to manage private car availability for residents, encourage greater use of public transport for journeys to work and encourage residents to cycle and walk to work. Details are provided of GoCar car sharing facilities and public transport in the vicinity.

7.4.6. Regarding parking, Section 4.19 of the Sustainable Urban Housing: Design Standards for New Apartments (2020) refers to car parking in Central and/or Accessible Urban Locations and states that;

In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

These locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.

7.4.7. Section 16.38 of the Dublin City Council Development Plan 2016-2022 sets out car parking standards, whereunder Table 16.1 sets out maximum car parking standards for various land uses. As detailed in Map J of the Development Plan, the site is located in Zone/Area 1 (inner city location). Table 16.1 requires that residential development in Zone 1 provide a maximum of one car parking space per dwelling. Further guidance is provided under Section 16.38, including, inter alia, the following:

Car parking provision in Zones 1 and 2 is restricted on account of the proximity of these locations to public transport'.

Parking provision below the maximum may be permitted provided if it does not impact negatively on the amenities of surrounding properties or areas and there is no potential negative impact on traffic safety.

The planning authority may require the maximum number of car parking spaces specified in Table 16.1 to be further reduced where it is considered that the surrounding road network is not sufficient to cater for the volume of traffic likely to be generated by the proposed development. Given the high accessibility by public transport to Zone 1 there shall be no minimum requirement for car parking in that zone.

A relaxation of maximum car parking standards will be considered for any site within parking Zone 1 (as illustrated on Map J) provided it is located in close proximity to quality public transport, and subject to requirements below. (There will also be no car storage requirement.) This relaxation of the standards will apply to residential developments where the Applicant sets out a clear case satisfactorily demonstrating a lack of parking need for the development based on factors including:

- *Locational suitability and advantages*
- *Ease of access to alternative and sustainable transport modes*
- *Availability of car sharing/car clubs and/ or charging points for electric vehicles.*

It will also be necessary to adequately demonstrate that the lack of car parking on the site should not reasonably give rise to negative impacts on the amenities of surrounding properties or on the immediate street once the development is occupied. The surrounding built context must hence be taken into account, including parking arrangements/restrictions and general parking availability in the vicinity.

7.4.8. Section 16.38 specifically refers to 'Residential Car Parking In Apartments' and states that;

Car parking standards are maximum in nature and may be reduced in specific, mainly inner city locations where it is demonstrated that other modes of transport are sufficient for the needs of residents.

7.4.9. Having regard to (i) the inner-city location of the proposed development, (ii) its close proximity to high-quality public transport, including the Luas stops at Charlemont St. and Harcourt St. and frequent Dublin Bus services along Charlemont St. and Adelaide Rd., (iii) the immediate surrounding road network which is not sufficient to cater for the volume of traffic likely to be generated by the proposed development given its confined access arrangement across the Luas line, and (iv) the availability of GoCar car sharing at Charlemont Place, Adelaide Road, Harcourt Terrace, Charlemont St. and other carsharing options in the vicinity e.g. YUKO at Charlemont St. and Earlsfort Terrace, it is my view that the non-provision car parking for the proposed residential development would be acceptable in this instance and would accord with Section 4.19

of the Sustainable Urban Housing: Design Standards for New Apartments (2020) and Section 16.38 of the Dublin City Council Development Plan 2016-2022. The absence of parking for the proposed development would mitigate increased levels of traffic flows and congestion, prevent an increase in traffic collisions, have positive environmental effects, and promote the use of sustainable modes of transportation. Such development would be consistent with Policy MT17 of the Development Plan which seeks '*To provide for sustainable levels of car parking and car storage in residential schemes in accordance with development plan car parking standards (section 16.38) so as to promote city centre living and reduce the requirement for car parking*'.

7.4.10. Regarding service delivery / vehicular drop-off provision, it is my view that the adjacent public street network provides ample on-street parking for service delivery and drop-off parking, much of which is subject to hourly pay and display time restrictions. Vehicles that display a disabled person's parking permit can park in any pay-and-display/disabled parking bay without making a payment for parking.

7.4.11. Regarding pedestrian access to the proposed development, a recessed entrance is provided at the front/northern elevation. A pedestrian crossing leads from this entrance to the footpath on the northern side of the access road serving Peter Place. A low-rise landscape zone is provided to the western side of the recessed entrance of the building, along the southern side of the access road. Having regard to (i) the location of the proposed development and its close proximity to the Luas rail track, (ii) the relatively low levels of traffic to and from the Peter Place cul-de-sac and (iii) the lower speed environment in Peter Place, I consider the absence of a public footpath to the front/north of the proposed development acceptable in this instance. As per Section 4.3.2 of the Design Manual for Urban Streets and Roads (2019), the provision of a pedestrian crossing at this location would provide pedestrian priority and assist in making the environment self-regulating.

7.4.12. Regarding construction traffic, the Applicant has submitted a Construction Management Report prepared by Cora Consulting Engineers. Section 4.2.2 of this plan states that the contractor shall establish a Traffic Management Plan to regulate all construction traffic, including site deliveries, waste collection, etc., taking into account the proximity to and crossing of the Luas tracks. Furthermore, the Report states that the Traffic Management Plan shall allow for the safe arrival and departure

of all operatives, plant and machinery, including crossing the Luas tracks and negotiating nearby junctions. Traffic marshals, signalling at site entry/exit points, etc. shall be employed as necessary to ensure the provisions of the traffic management plan are implemented. I note that the Planning Authority raised no objections to the Construction Management Report submitted and in its notification of decision to grant permission imposed Condition No. 13 requiring that

"prior to commencement of development, and on appointment of a contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise management measures and off-site disposal of construction/demolition waste. The plan shall identify for deliveries and site compounds. The Construction Management Plan shall specifically address any points raised by TII and the Applicant shall liaise with DCC and TII during the construction process. A Mobility Management Plan for the construction phase shall be submitted and this should seek to reduce overspill parking onto Peter's Place".

7.4.13. Furthermore, Condition No. 14 (i)(i) requires the following:

Prior to commencement of development, a Construction Traffic Management Plan including access to services, shall be submitted for the written agreement of the planning authority subject to the written agreement of TII. The Construction Traffic Management Plan shall identify mitigation measures to protect operational Luas infrastructure.

7.4.14. I am satisfied that the terms of these Condition would ensure compliance with the Council's road safety standards and TII's requirements and would be in accordance with 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 Council's Transportation Planning Division reports submitted acknowledges that auto-tracking of emergency and refuse vehicles demonstrate sufficient room for turning manoeuvres.

7.4.15. The Appellants express concern regarding the proposed brick wall extending along the Luas line, replacing the existing translucent screening at the exit of Peter Place.

The appellants contend that this would obstruct the visibility of vehicles exiting Peter Place, which could result in a collision with oncoming Luas vehicles. Western elevation drawings detail how the Luas track sound barrier along the site's western boundary is removed for clarity. Section drawings (Dwg No. S001) details the site boundary along the Luas track, which indicates the retention of the existing acoustic fencing along the edge of the Luas embankment. Section Dwg No. 32202/P03.03 details the provision of a low-level landscape planter bed at the north-western corner. Dwg. No. 053/PL2 details the maintenance of a 15.2m sightline to the left and 52m to the right when exiting Peter Place, from a 2.4m setback from the edge of the carriageway. I note that the Council's Transport Planning Division raised no concerns regarding sightlines at the entrance to Peter Place. In considerations of the drawings submitted and given (i) the existing established access arrangements to Peter Place and the sightlines available thereon, (ii) the retention of the existing Luas track boundary treatment and the proposed building behind this and (iii) low rise design treatment of the landscaped area to the west of the entrance serving the proposal, it is my view that that the proposed development would not obscure or disimprove the visibility/sightlines at the entrance/exit point of Peter Place. Condition Nos. 13 and 14 imposed address any issues regarding overhanging / encroachment of the public road, construction management, proposed pedestrian crossing, mobility management and the requirements of Transport Infrastructure Ireland re. Luas infrastructure and operations. I recommend, therefore, that the proposed development is not refused permission on these grounds of appeal.

7.5. Access to the proposed bicycle shed

- 7.5.1. The Appellants Patrick and Sheila O'Shea object to the proposed bike store serving the proposed development on the grounds that it would open onto the area to the front of their vehicular access/driveway serving house No. 28 Peter Place. The Appellants assert that the proposed development would be contrary to the permitted vehicular access/driveway to their dwelling, which requires no movement across its entrance for safety reasons. The Appellants state that they have not consented to the demolition of the existing railway stone wall within their ownership to facilitate the construction of the proposed development and bike store therein. The Appellants contend that this brick wall is a feature of Peter Place and should not be demolished. According to the

Appellants, residents of Peter Place park their cars on the road in front of the proposed bike shed, between the existing raised brick flower planter and the public footpath. The Appellants state that this would make it impossible for people to enter the bike shed because there would be no space between the parked cars to bring bicycles through. The Appellants claim that residents of the proposed development would only be able to use the bike shed if Peter Place residents were barred from parking on this stretch of road and the Appellants were barred from using the parking space to the side of their house. With that, the Appellants state that they have been parking their car at this location for the past sixteen years and that they have the legal right and planning permission to do so.

7.5.2. The proposed bike store (45.97 sq.m.) is located at the southern end of the proposed building at ground floor level. The bike store is accessed internally and by way of a pair of inward opening double doors on the eastern elevation, immediately adjoining/ to the south of the existing raised landscaped bed in Peter Place, which is to be retained. These double doors open onto the cul-de-sac road end, to the front of the vehicular entrance serving No. 28 Peter Place.

7.5.3. Under P.A. Ref. 3997/20, permission was granted in 2021 for the demolition of an existing brick and block wall and palisade fence within the curtilage of No. 28 Peter Place to provide vehicular access and the provision of hard standing for a single car parking space to the side of the house, accessible from Peter Place, as well as the construction of a 2m high fence with access gate enclosing the rear of the property. As detailed on the drawings under this permission and the subject application, a public footpath is provided to the front of No. 28 Peter Place and paving between the footpath and the adjacent raised planter bed. This paved area is not of sufficient width for a car parking space, and in any event, a vehicle parked at this location would block the vehicular entrance to No. 28 Peter Place. Having regard to the location of the external access doors of the proposed bike store, it is my view that its location would not prevent vehicular access/egress to No. 28 Peter Place and would be easily accessible by residents of the proposed development via the public footpath and adjoining paving at this location. I recommend, therefore, that the proposed development is not refused permission on these grounds of appeal.

7.5.4. Regarding the issue of consent (and the absence thereof) for the demolition of the existing railway stone wall within Appellant's ownership to facilitate the construction of

the proposed development, Section 5.13 of the Development Management Guidelines (2007) refers to 'Issues relating to title to land' and states that the planning system is not designed as a mechanism for resolving disputes about title to or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that where there is doubt in relation to the legal title of the applicant, the Planning Authority may decide to grant permission, however a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000 (as amended). Section 34(13) of the Planning and Development Act states that 'a person is not entitled solely by reason of permission to carry out any development'. Having regard to the above and in the absence of evidence to demonstrate that the proposed development interferes with adjacent dwelling No. 28 Peter Place, I consider it inappropriate to refuse permission for the proposed development on these grounds.

7.6. Procedural Issues

- 7.6.1. The Appellants Patrick and Sheila O'Shea object to the proposed development on the grounds that the deadline for submitting observations to Dublin City Council was September 01, 2021, but the documentation on file was not available to view until mid-August. The Appellants state that this limited their ability to obtain professional advice to make a thorough observation. Furthermore, the Appellants claim they were not notified within three days of the Planning Authority's decision, leaving them only five days to submit an appeal with An Bord Pleanála. Again, this limited the Appellants' ability to obtain professional advice to file a comprehensive appeal.
- 7.6.2. It is my view that this ground of appeal is a function of the Planning Authority and not within the remit of An Bord Pleanála. I am satisfied that this did not prevent the concerned party from making representations to the Council on the proposed development. The third-party appellants have made a valid planning appeal to An Bord Pleanála, and the issues raised in this objection are addressed above.

7.7. Screening for Appropriate Assessment

- 7.7.1. The nearest Natura 2000 European Sites to the appeal site are the South Dublin Bay Special Area of Conservation (Site Code: 000210) and the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), located c. 3 km east of

the site. The North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC are located c. 6km to the northwest.

- 7.8. A Screening Report for Appropriate Assessment, dated July 2020, was submitted with the application. The report concludes that there will be no likely significant effects from the project on the aforementioned Natura 2000 sites, either alone or in combination with any other plans or projects.
- 7.9. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, in particular its location in a serviced settlement, and having regard to its separation distance from any European site, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1.1. Having regard to the provisions of the Dublin City Council Development Plan 2016-2022 and the zoning of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual and residential amenity of the area, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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:</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:</p> <ul style="list-style-type: none">(a) Location of the site and materials compound(s), including areas identified for the storage of construction refuse;(b) Location of areas for construction site offices and staff facilities;(c) Details of site security fencing and hoardings;(d) Details of on-site car parking facilities for site workers during the course of construction;(e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;(f) Measures to obviate queuing of construction traffic on the adjoining road network;

	<p>(g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;</p> <p>(h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;</p> <p>(i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;</p> <p>(j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;</p> <p>(k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;</p> <p>(l) Means to ensure that surface water runoff is controlled such that no silt or other pollutants enter local surface water sewers or drains.</p> <p>A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.</p> <p>Reason: In the interest of amenities, public health and safety.</p>
4.	<p>(i) No part of the development shall encroach upon the public road, by means of underbuild or overhang, including façade projection or hard landscaping. The development shall be constructed wholly within the red line ownership boundary.</p> <p>(ii) Any works to the footpath and road on Peter's Place to facilitate a potential pedestrian crossing shall be agreed with the Council's Traffic Advisory Group (TAG) prior to the commencement of development. All works shall be provided at the Applicant's expense.</p> <p>(iii) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.</p> <p>Reason: In the interests of orderly development.</p>

5.	<p>The following requirements of Transport Infrastructure Ireland shall be complied with:</p> <p>a) Prior to commencement of development, details of proposed 'full height screens', which are proposed where windows and balconies are within the OCS exclusion zone, shall be submitted to TII for written agreement.</p> <p>b) Prior to commencement of development, details of the interface between the proposed piling and Luas infrastructure, with reference to the Luas embankment on the subject site, shall be agreed in writing with TII. Such details shall include the following, inter alia: (i). An engineering assessment of the possible impact of the construction of the development in terms of potential vibration and settlement to the Luas embankment'. (ii). A subsequent vibration and settlement monitoring specification from the engineers that undertook the engineering assessment (iii). A site survey on the existing foundations of the embankment will also be required to ensure there will be no clashes with the proposed piles and the existing Luas embankment foundations. (iv). A monitoring plan that is in accordance with the monitoring specification from a specialist monitoring contractor</p> <p>c) The Luas operator/TII will require 24hr access to Luas infrastructure. Prior to the commencement of development, the developer shall enter into an access and maintenance agreement with TII, which shall be submitted as part of the Construction Management Plan as required hereunder.</p> <p>d) Works are proposed to be carried out in close proximity to Luas infrastructure. The Applicant, developer or contractor shall ensure that there is no adverse impact on Luas operation and safety and will be required to apply for a works permit from the Luas Operator by virtue of the Light Railway (Regulation of Works) Bye-laws 2004 (S.I. number 101 of 2004) which regulates works occurring close to the Luas infrastructure in accordance with TII's 'Code of engineering practice for works on, near, or adjacent the Luas light rail system'.</p> <p>e) All deliveries made to the development site, including during the construction and operational phase, shall be made to limit interference with Luas operations. Such works shall be subject to a permit from the Light Rail</p>
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	<p>Operator and should be submitted as part of a Construction Management Plan as required hereunder.</p> <p>f) In the event that any works which require the removal, temporary and final reinstatement of Luas infrastructure are to be undertaken outside of Luas operational hours, under system shutdown and Overhead Conductor System isolation, such works will require a Luas permit.</p> <p>g) Proposed foul and surface water drainage shall not utilise, discharge, surcharge or share common outfalls with existing Luas infrastructure.</p> <p>h) The developer shall be responsible for any loss of Luas revenue or any other costs associated with a suspension of passenger services, or alterations to the Luas infrastructure which may arise out of, or as a consequence of, the design, construction or the operation of the development by the developer, contractors, sub-contractors, their employees or agents or any other related party. Appropriate agreements between TII, Luas Operator and the developer shall be undertaken and completed prior to the commencement of development.</p> <p>(i) i) Prior to commencement of development, a Construction Traffic Management Plan including access to services, shall be submitted for the written agreement of the planning authority subject to the written agreement of TII. The Construction Traffic Management Plan shall identify mitigation measures to protect operational Luas infrastructure.</p> <p>ii) Prior to commencement of development, a Demolition and/or Construction Method Statement shall be submitted for the written agreement of the planning authority subject to the written agreement of TII. The method statement shall resolve all Luas interface issues and shall (i) identify all Luas alignment interfaces, (ii) contain a risk assessment for works associated with the interfaces, and (iii) contain mitigation measures for unacceptably high risks, including vibration and settlement monitoring regime if necessary. The method</p>
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	<p>statement shall be in accordance with TII's 'Code of engineering practice for works on, near, or adjacent the Luas light rail system'.</p> <p>iii) Prior to the commencement of development, where Overhead Conductor System (OCS) poles and/or fixings are located on/or adjacent to the proposed development, the following plans and details shall be submitted for the written agreement of the planning authority subject to the written agreement of TII: (i) OCS pole protection and safety distances, and/or (ii) Existing, temporary and subsequent permanent fixings specifications/plans.</p> <p>j) The development shall ensure no risk of intrusion of people into the OCS danger zone via opening windows, maintenance, cleaning, balconies, or terraces. The danger zone is described in TII's 'Code of engineering practice for works on, near, or adjacent the Luas light rail system' defined by a 2.75m offset in all directions from the nearest item of OCS infrastructure.</p> <p>k) The developer shall be required to ensure any works including landscaping, planting and signage do not impede tram drivers' visibility of road junctions, associated signals or affect the footpath to the extent that pedestrians may walk into the swept path of oncoming trams.</p> <p>Reason: To ensure no adverse impact on Luas operation and safety.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
7.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>

8.	<p>Prior to commencement of development, the developer shall enter into a water and/or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
9.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,</p> <p>(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
10.	<p>Proposals for an estate name, apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features or alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.</p>

11.	<p>The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
12.	<p>Prior to the occupation of the development, a Mobility Management Strategy (travel plan) shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carsharing by residents and staff employed in the development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development. This strategy shall include site specific measures to discourage overspill parking in Peter Place.</p> <p>Reason: In the interest of encouraging the use of sustainable modes of transport.</p>
13.	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.</p>
14.	<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. All</p>

	<p>existing over ground cables shall be relocated underground as part of the site development works.</p> <p>Reason: In the interests of visual and residential amenity.</p>
15.	<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>
16.	<p>The apartments shall not be used for any short-term residential letting.</p> <p>Reason: In the interests of the proper planning and sustainable development of the area.</p>
17.	<p>Prior to the commencement of the development as permitted, the Applicant or any person with interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all units permitted, to first occupation by individual purchasers, i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>

18.	<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 of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the Local Authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>
19.	<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>
20.	<p>The developer shall pay to the planning authority a financial contribution in respect of the LUAS Cross City Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act</p>

	<p>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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>
21.	<p>The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 as a contribution in lieu of the public open space requirement in respect of public open space 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 Development Contribution Scheme made under Section 38 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 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.</p> <p>Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.</p>

Brendan Coyne
Planning Inspector

29th September 2022