



An
Bord
Pleanála

Inspector's Report

ABP-311864-21

Development	Demolition of all buildings on site, construction of 2 buildings with retail units and 33 apartments and all ancillary site works.
Location	10-12 Newmarket and No. 32 Mill Street, Dublin 8
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2046/21
Applicant(s)	Creedon Group Ltd
Type of Application	Planning Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party Appeal
Appellant(s)	Teelings Whiskey Company
Observer(s)	None
Date of Site Inspection	3 rd November 2022
Inspector	Susan Clarke

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1.0 Site Location and Description

- 1.1. The rectangular shaped appeal site, measuring 997 sq m, is located at Nos. 10-12 Newmarket and No. 32 Mill Street, Dublin 8, approximately 2km to the south west of Dublin City Centre. The site is located within the Liberties area, Dublin 8, and is bound to the north by Newmarket, to the east by Dublin Liberties Whiskey Company (DLWC), to the south by Mill Street, and to the west by Teelings Whiskey Distillery. The area has a mixed character with residential (including student accommodation), commercial, industrial, and retail development and has been significantly redeveloped in recent years. There is a high-density mixed-use student accommodation scheme, and a mixed-use development of 6 storeys, with setback 7th storey on the opposite of Mill Street to the subject site. Also on Mill Street is the Aloft Hotel of 8 storeys with the top two floors setback. To the north on Newmarket, the former IDA site is being redeveloped for hotel, retail and residential use with heights of 6-8 storeys on Newmarket and 13 storeys further north.
- 1.2. The site is currently in use as an office, having previously been in use as a light industrial and food co-op use. There is a significant ground level change on site with the Newmarket boundary being approximately 3m higher than that on Mill Street.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - the demolition of all existing buildings (1,630 sqm) on site
 - the construction of a new mixed use building ranging in height from 5 and 7 storeys above basement level onto Newmarket (to the north), and from 2 to 9 storeys onto Mill Street (to the south), with a total gross floor area (GFA) of 4,413 sqm (excluding the basement of 222 sqm GFA).
 - Two retail units proposed at ground floor level fronting Newmarket and Mill Street, with approximate floor areas of 173 sqm and 153 sqm, respectively.
 - A total of 33 No. residential apartments (comprising 6 No. 1 bedroom units; 25 No. 2 bedroom units; and 2 No. 3 bedroom units) are provided on the upper floors of the building, with private and communal open space.

- 81 No. bicycle parking spaces along with waste/bin store and a plant room are provided at basement level.
- An ESB sub-station and switch room (36 sqm) is provided at ground floor level at the southern end of the building, fronting Mill Street.
- PV panels are proposed at rooftop level.

2.2. The proposed development shall be serviced by a new internal drainage system, with separate foul and stormwater sewers within the site boundary. These shall combine at a final manhole at the site boundary, before discharging to the public combined sewer on Mill Street. A dead-leg spur shall be provided to allow the development's drainage to integrate with any future separation of the public drainage system by the Local Authority or Irish Water. A second foul drainage connection from the development's upper floors shall also be made to the public combined sewer in Newmarket. Water will be supplied via a new metered connection from the existing public watermains in Newmarket and Mill Street.

2.3. Following a Request for Further Information, the proposed retail frontage on Mill Street was increased from 2.265m to 4.925m. Furthermore, minor amendments were proposed to the bicycle parking proposal and servicing arrangements. In addition, obscured glazing and landscaping were proposed to prevent overlooking to the adjoining sites. There were no further significant amendments to the scheme at RFI stage.

2.4. **Documentation Submitted with Planning Application**

2.4.1. In addition to a Planning Application Form and Statutory Notices, the application included supporting documents (in association with architectural, and engineering drawings) as follows:

- Architectural Design Report including photomontages and a housing quality assessment
- Planning Report
- Engineering Services Report
- Sustainability Report
- Outline Construction Management Plan

- Proposed Waste Management Plan
- Traffic and Transport Report
- Mobility Management Plan
- Daylight, Sunlight and Overshadowing Study
- Fire Safety Design
- Archaeological Report
- Building Lifecycle Report
- Appropriate Assessment Screening Report
- Ecological Impact Assessment
- Disability Access Planning Statement.

2.4.2. Following the **RFI**, the Applicant submitted further documentation:

- Further Information Request Report
- Odour and Inward Noise Impact Assessment Report.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Dublin City Council issued a Notification of Decision to Grant Permission on 7th October 2022, subject to 20 No. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Reports (11th March 2021 and 7th October 2021) is consistent with the decision of the Planning Authority.

The Planning Officer considered that the proposed development in terms of the site's planning history and policy context and zoning objective afforded to the site under the former City Development Plan (Dublin City Development Plan 2016-2022). The Officer considered that the demolition of the existing buildings on-site and the

construction of the mixed-use scheme was acceptable in principle. The Officer was satisfied that the proposed height and density was acceptable and that the proposed residential units were compliant with the Apartment Guidelines. Following initial concerns in relation to the limited retail frontage proposed to Mill Street, and the Applicant's revised RFI proposal to increase the frontage from 2.265m to 4.925m, the Officer considered the proposal acceptable. Furthermore, the Officer was satisfied with the findings of the odour and inward noise impact assessment report submitted by the Applicant as part of the RFI response, which in short, found that the operations on the adjoining Teelings site would not reduce the residential amenity of future residents of the proposed scheme.

3.2.2. Other Technical Reports

- Drainage Division (3rd February 2021): No objection, subject to condition.
- Roads & Traffic Planning Division (30th September 2021 and 4th March 2021): No objection, subject to condition.
- Archaeology (4th March 2021): No objection, subject to condition.
- Environmental Health Officer (2nd March 2021): Advises that insufficient information submitted with the application in relation to potential noise and air pollution impacts during construction.

3.3. Prescribed Bodies

Transport Infrastructure Ireland: No objection subject to Section 49 levy.

Irish Water: No response received.

National Transport Authority: No response received.

3.4. Third Party Observations

3.4.1. One third-party observation was submitted to the Local Authority by Teelings Distillery (the Appellant) opposing the development. The key points raised can be summarised as follows:

- Excessive plot ratio, site coverage and height
- No car parking provision

- Impact on neighbouring business' operations
- Construction impacts
- Fire and safety.

4.0 Planning History

4.1. Subject Site

- 4.1.1. **Reg. Ref. 3322/17:** Planning permission granted in January 2018 for the demolition of all existing buildings on site and the construction of a new building ranging in height between 2- to 6- storeys above ground level on Mill Street, and between 4- and 5- storeys above ground level onto Newmarket Square with a total Gross Floor Area (GFA) of 3,995 sqm to include 843 sqm (GFA) of micro-brewery floorspace (including ancillary bar and cafe/restaurant use) and 2,857 sqm (GFA) of office floorspace.
- 4.1.2. **Reg. Ref. 6493/06:** Planning permission granted in March 2007 for change of use from 'industrial' to 'industrial and use as a food co-operative'.
- 4.1.3. **Reg. Ref. 1540/97:** Planning permission granted in September 1997 for retention of rebuilding improvements incorporating the upgrading of the elevation.

4.2. Neighbouring Sites

Teelings Distillery – (west of the subject site)

- 4.2.1. **Reg. Ref. 3309/13:** Planning permission granted in January 2014 for the change of use from warehousing to a micro craft distillery and visitor centre. The following Conditions attached to that Permission are relevant to the subject case:

*1. Insofar as the Planning & Development Act 2000 (as amended) and the Regulations made thereunder are concerned, **the development shall be carried out in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the conditions attached hereto.** For the avoidance of doubt, this permission shall not be construed as approving any development shown on the plans, particulars and specifications, the nature and extent of which has not been adequately stated in the statutory public notices.*

Reason: To comply with permission regulations.

7. The developer shall comply with the requirements set out in the **Codes of Practice** from the Drainage Division, the Roads Streets & Traffic Department and the **Noise & Air Pollution Section**.

Reason: To ensure a satisfactory standard of development.

11. (a) During the construction and demolition phases, the proposed development shall comply with British Standard 5228 "Noise Control on Construction and open sites Part 1. Code of practice for basic information and procedures for noise control."

(b) Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. In particular, the rated noise levels from the proposed development shall not constitute reasonable grounds for complaint as provided for in B.S. 4142. Method for rating industrial noise affecting mixed residential and industrial areas.

(c) Before the use hereby permitted commences, **a scheme shall be submitted to and approved in writing, by the planning authority for the effective control of noise from the premises.** The scheme shall be implemented before the use commences and thereafter permanently maintained.

Reason: In order to ensure a satisfactory standard of development, in the interests of residential amenity.

12. The following requirements of the Environmental Health Section (Air Quality Monitoring and Noise Control Unit) in relation to noise shall be complied with:

a) No deliveries of materials, plant or machinery shall take place before 7.00hrs or after 18.00hrs.

b) Details relating to the likely sound power levels of all externally located plant and equipment associated with this development during the operational phase shall be submitted to the Planning Department prior to installation.

c) Noise levels from the premises during the operational phase, measured as Laeq (5 mins at night, 15 mins in day) when all proposed plant is operating shall not exceed the LA90 by 5dB (A) or more.

d) Noise levels from events/functions should not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place.

REASON: in the interests of the amenities of both the immediate neighbours and the general surroundings.

13. The following requirements of the Environmental Health Section (Air Quality Monitoring and Noise Control Unit) in relation to extraction and ventilation shall be complied with:

*a) Before the use hereby permitted commences, **a scheme shall be submitted to, and approved in writing by, the Planning Authority for the effective control of fumes and odours from the premises.** This includes the kitchen area for the café/restaurant.*

b) A suitably qualified and experienced person shall undertake the design and installation of all ventilation systems installed in the distillery.

c) The ventilation system(s) should be designed to incorporate a stack erected to a minimum height of one metre above the eaves of the premises or adjoining premises, and be so sited to ensure the emissions will cause no nuisance.

*d) **A suitable filtration system must be installed to neutralise odours** (if applicable) prior to their discharge.*

e) The fan used to propel the extract shall be installed and be of sufficient power to ensure high-exit velocity of the fumes during all weather conditions.

REASON: In the interests of the amenities of both the immediate neighbours and the general surroundings.

14. The following requirements of the Environmental Health Section (Air Quality Monitoring and Noise Control Unit) in relation to air pollution control shall be complied with:

a) **No emissions, including odours, from the activities carried on at the site shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary.**

b) *All emissions to air associated with the development, other than steam or water vapour, should be colourless and free from visible mist. **All emissions should be free from offensive odour outside the process boundary.***

REASON: In the interests of the amenities of both the immediate neighbours and the general surroundings. (Bold: My emphasis.)

Dublin Liberties Whiskey Company – No. 33 Mill Street (east of the subject site)

4.2.2. **Reg. Ref. 2162/14:** Planning permission granted in July 2014 for the change of use from industrial to a whiskey distillery with associated visitor centre. The development also included a one-bedroom caretaker duplex-apartment located within the attic space of the new feature roof profile. The following Conditions attached to that Permission are relevant to the subject case:

1. *Insofar as the Planning & Development Act 2000 (as amended) and the Regulations made there under are concerned **the development shall be carried out in accordance with the plans, particulars and specifications lodged with the application, as amended by the Further Information received on 27th May 2014, save as may be required by the conditions attached hereto.** For the avoidance of doubt, this permission shall not be construed as approving any development shown on the plans, particulars and specifications, the nature and extent of which has not been adequately stated in the statutory public notices.*

Reason: To comply with permission regulations.

9. *The following requirements of the Environmental Health Section (Air Quality Monitoring and Noise Control Unit) in relation to noise shall be complied with:*

i. *During the construction and demolition phases, the proposed development shall comply with British Standard 5228 - Noise Control on Construction and open sites Part 1 Code of practice for basic information and procedures for noise control.*

ii. No deliveries of materials, plant or machinery shall take place before 7.00 or after 18.00 in the evening.

iii. All noise-emitting plant items identified in the Decibel Noise Control Technical Report (Section 4.1 Process & Building Services Plant) shall be attenuated in the manner proposed in the report.

iv. **The noise levels from the premises during the operational phase, measured as a LAeq (5 mins at night, 15 mins in day) when all proposed plant is operating, shall not exceed the LA90 by 5dB(A) or more at the nearest noise sensitive premises.**

v. **Deliveries to the premises may only take place between the hours of 7.00 and 18.00.**

vi. **Noise levels should not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place.**

REASON: In the interests of the amenities of both the immediate neighbours and general surroundings.

10. The following requirements of the Environmental Health Section (Air Quality Monitoring and Noise Control Unit) in relation to extraction and ventilation shall be complied with:

i. A suitably qualified and experienced person should undertake the design and installation of all ventilation systems installed in the proposed distillery.

ii. The **ventilation system(s)** should be designed to incorporate a stack erected to a minimum height of 1 metre above the eaves of the premises or adjoining premises and be so sited **to ensure the emissions will cause no nuisance.**

iii. **A suitable filtration system must be installed to neutralise odours (if applicable) prior to their discharge.**

iv. The carbon filtration system proposed in the Byrne Environmental Air Quality Impact Report should adequately deal with kitchen odours. The fan used to propel the kitchen extraction system shall be of sufficient power to ensure high exit velocity of the fumes during all weather conditions.

REASON: In the interests of the amenities of both the immediate neighbours and the general surroundings.

11. The following requirements of the Environmental Health Section (Air Quality Monitoring and Noise Control Unit) in relation to air pollution control shall be complied with:

a) No emissions, including odours, from the activities carried on at the site shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary.

b) All emissions to air associated with the development, other than steam or water vapour, should be colourless and free from visible mist. All emissions should be free from offensive odour outside the process boundary.

*REASON: In the interests of the amenities of both the **immediate neighbours** and the general surroundings.*

12. The applicant shall comply with the Code of Practice of the Air Quality Monitoring and Noise Control Unit of Dublin City Council including the following:

i. Instruction shall be given to ensure that vehicles and plant arriving and leaving the site comply with the stated hours of work.

*ii. Noisy plant and equipment shall be situated as far as possible from noise sensitive buildings. **Barriers to reduce noise reaching noise sensitive buildings shall be employed where practicable.***

iii. Machines in intermittent use shall be shut down or throttled down to a minimum when not in use.

iv. Plant shall be maintained in good working order so that extraneous noise is kept to a minimum.

v. Noise emitting machinery, which is required to run continuously, shall be housed in suitable acoustic lined enclosures where practicable.

vi. Compressors and generators shall be sited in areas least likely to give rise to nuisance. Care shall be taken to reduce noise when loading or unloading vehicles or dismantling scaffolding or moving materials etc.,

vii. *Burning of materials on site is not permitted.*

viii. *During demolition works on the site, all necessary steps to contain dust shall be taken so as to prevent or limit dust being carried to occupiers of other buildings in the locality.*

ix. *During any commercial site clearance, excavated materials shall be damped down or otherwise suitably treated to prevent the emission of dust from the site. Any stockpiles shall be planned and sited to minimise the potential for dust nuisance.*

x. *During the construction phase of the development, best practicable means shall be employed to minimise air blown dust being emitted from the site.*

REASON: In the interests of the amenities of both the immediate neighbours and the general surroundings.

15. (a) *During the construction and demolition phases, the proposed development shall comply with British Standard 5228 "Noise Control on Construction and open sites Part 1. Code of practice for basic information and procedures for noise control."*

(b) **Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place.** *In particular, the rated noise levels from the proposed development shall not constitute reasonable grounds for complaint as provided for in B.S. 4142. Method for rating industrial noise affecting mixed residential and industrial areas.*

(c) *Before the use hereby permitted commences, a scheme shall be submitted to and approved in writing, by the planning authority for the effective control of noise from the premises. The scheme shall be implemented before the use commences and thereafter permanently maintained.*

Reason: In order to ensure a satisfactory standard of development, in the interests of residential amenity. (Bold: My emphasis.)

- 4.2.3. **Reg. Ref. 4156/19:** Planning permission granted in January 2020 for an extension of trading hours of the existing bar up to 23:30hrs, Mondays - Thursdays; up to 00:30hrs on Fridays and Saturdays; and up to 23:00hrs on Sundays.

No. 8, Newmarket and No. 18 Mill Street, Dublin 8 – Immediately West of Teelings Distillery

- 4.2.4. **Reg. Ref. 3321/17:** Planning permission granted in January 2018 for the demolition of all existing buildings on site and the construction of a new part 4-, part 5- and part 6-storey building above basement level with a total Gross Floor Area (GFA) of 9,401.05 sqm, to include 264.97 sqm (GFA) of Indoor Market Hall / Retail floorspace and 1,251.07 sqm (GFA) of office floorspace at ground floor level with a further 7,885.01 sqm (GFA) of office floorspace on the upper levels. The building at its highest point will measure 40.9m
- 4.2.5. **Reg. Ref. 3672/19:** Planning permission granted in January 2020 to amend Reg. Ref. 3321/17 for mixed use development comprising office, indoor market and artist studios. The building at its highest point will measure 42.12m

Former IDA Site, Newmarket Industrial Estate, Newmarket, Dublin 8 – North of Subject Site, on the opposite side of Newmarket

- 4.2.6. **Reg. Ref. ABP 307067-20:** Planning permission granted in August 2020 for 413 No. Build to Rent apartments and associated site works. The building heights range from 16.9m on Newmarket to a highpoint of 43.1/43.6m (parapet/max. height including lift overrun) on the 13-storey feature building on the corner of St. Luke's Avenue and Brabazon Way.
- 4.2.7. **Reg. Ref. 4743/19:** Planning permission granted in October 2020 for a hotel (151 bedrooms) a café/restaurant and a retail unit.

Brewery Block, bounded by Newmarket, St. Luke's Avenue, Brabazon Place/Brabazon Row and Ardee Street – North West of the Subject Site, on the opposite side of Newmarket

- 4.2.8. **Reg. Ref. ABP 305324:** Planning permission granted in December 2019 for the demolition of existing warehouses and construction of 368 No. student accommodation bedspaces. The building height ranges from 2- 8 storeys (up to 27.26m).

Site bounded by Mill Street, Sweeney’s Terrace and Clarence Mangan Road, Dublin 8 – South of the Subject Site, on the opposite side of Mill Street

- 4.2.9. **Reg. Ref. ABP 303436-19:** Planning permission granted in April 2019 for 235 No. student bedspaces and 37 No. Build to Rent apartments. The building height ranges in height from 3-7 storeys.

Junction of Mill Street and Blackpitts, Dublin 8 – South West of the Subject Site, on the opposite side of Mill Street

- 4.2.10. **Reg. Ref. 3755/15:** Planning permission granted in February 2016 for a hotel (202 bedrooms). The building extends to eight storeys in height.

Part 8 Public Realm Improvement Plan for the Newmarket Area

- 4.2.11. **Reg. Ref. 2283/17:** The proposed works are designed to create a high quality, multi-functional market square and city-wide destination and to improve permeability throughout the area via enhanced links across Cork Street to the north and Mill Street to the south.

5.0 Policy Context

5.1. National & Regional Policy / Guidance

- 5.1.1. The **National Planning Framework (NPF)** is the Government’s high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards ‘compact growth’, which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains several policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints;
- NPO 4 promotes attractive, well-designed liveable communities;
- NPO 6 aims to regenerate cities with increased housing and employment;
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards

- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking
- NPO 27 promotes the integration of safe and convenient alternatives to the car into the design of communities.
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location
- NPO 35 encourages increased residential density through a range of measures, including site-based regeneration and increased height.

5.1.2. The primary statutory objective of the **Regional Spatial and Economic Strategy for the Eastern and Midland Regional Authority 2019-2031** (RSES) is to support the implementation of the NPF. The RSES identifies regional assets, opportunities and pressures and provides policy responses in the form of Regional Policy Objectives. The spatial strategy and the Dublin Metropolitan Area Strategic Plan support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built-up area of Dublin City.

5.1.3. Following the theme of ‘compact urban growth’ and NPO 13 of the NPF, the 2018 **Urban Development and Building Heights, Guidelines for Planning Authorities** (hereafter referred to as the ‘Building Heights Guidelines’) outlines the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF. These Guidelines again highlight the need for a development plan to place more focus in terms of planning policy and implementation on reusing previously developed brownfield land building up urban infill sites. It notes that increasing building height is a significant component in making the optimum use of the capacity of sites in urban locations where transport employment, services and retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable the proper consideration of development proposals for increased building height linked with the achievement of greater density of development.

It is acknowledged that taller buildings will bring much needed additional housing and economic development to well-located urban areas and that they can also assist in reinforcing and contributing to a sense of place within the city or town centre.

The Guidelines note that statutory development plans have tended to be overtly restrictive in terms of maximum building heights in certain locations and crucially without the proper consideration of the wider planning potential of development sites. Such displacement presents a lost opportunity in key urban areas of high demand for new accommodation whether it is for living, working, leisure or other requirements in the built environment.

Planning policy must therefore become more proactive and more flexible in securing compact urban growth through a combination of facilitating increased densities and building heights while also being mindful of the quality of development and balancing amenity and environmental considerations. Appropriate identification and siting of areas suitable for increased densities and height will need to consider environmental sensitivities of the receiving environment as appropriate throughout the planning hierarchy.

Taking into account the foregoing, the specific planning policy requirement of the above guidelines under SPPR1 is:

In accordance with government policy to support increased building height and density in locations with good public transport accessibility, particularly town/city cores, Planning Authorities shall explicitly identify through the statutory plans, areas where increased building heights will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.

Special planning policy requirement SPPR2 states that in driving general increases in building heights, Planning Authorities shall also ensure appropriate mixtures of uses, such as housing, commercial and employment development, are provided for in the statutory plan context. SPPR3 allows provision in certain circumstances for planning authorities to approve developments, even where specific objectives of the relevant development plan or local area plan may indicate other requirements to the Guidelines.

5.1.4. Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020 and 2022), hereafter referred to as ‘the Apartment

Guidelines’, sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking. I note that the updated version of the 2020 Guidelines was published on 22nd December 2022. However, the updated amendments relate to Build-to-Rent schemes and as such, they are not material to the assessment of this case.

5.1.5. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009)

These Guidelines promote higher densities in appropriate locations. A number of urban design criteria are set out, for the consideration of planning applications and appeals. Increased densities are to be encouraged particularly on infill, brownfield urban sites in close proximity to public transport corridors. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. With specific reference to sites within 500m walking distance of public transport nodes (e.g. stations, halts, bus stops), the Guidelines recommend that minimum net densities of 50 units per hectare should be applied, subject to appropriate design and amenity standards.

5.2. Dublin City Development Plan 2022-2028

Since the Local Authority issued a Notification of Decision to Grant Permission for the proposed development, a new development plan has been prepared and adopted for the City. The relevant development plan to this assessment is the Dublin City Development Plan 2022-2028, which was adopted on 2nd November 2022 and came into effect on 14th December 2022.

The site is zoned Z10 (Inner Suburban and Inner City Sustainable Mixed Uses) which aims: *To consolidate and facilitate the development of inner city and inner suburban sites for mixed uses.* The primary uses supported in this zone are residential, office and retail with ancillary uses also facilitated where they deliver on the overall zoning objective.

The site is located within the Strategic Development and Regeneration Area 15 – Liberties and Newmarket Square. Section 13.17 of the Development Plan outlines the objectives for the SDRA. One of the “guiding principles” for the SDRA is to support 6-8 storeys as a benchmark height for new developments. (The opportunity for locally

higher buildings up to 12-14 storeys on “Key Opportunity Sites” is facilitated in the Newmarket area of the SDRA, however the subject site is not identified as one such site.)

The northern portion of the site is located within the Newmarket Conservation Area. There are a number of Protected Structures in the wider area, but none on or immediately adjoining the site.

The site is located within the Zone of Archaeological Constraint for the Recorded Monument DU018-020 (Historic City), which is listed on the Record of Monuments and Places (RMP).

Chapter 5 of the Development Plan relates to Quality Housing and Sustainable Neighbourhoods.

Chapter 15 outlines the Plan’s development management standards:

- Section 15.5.1 Brownfield, Regeneration Sites and Large-Scale Development
- Section 15.5.2 Infill Development
- Section 15.8.6 and 15.8.7 Public Open Space and Financial Contributions in Lieu of Open Space
- Section 15.9 Apartment Standards:
 - Unit Mix (15.9.1): The subject site is located within two areas of the city ((i) the Liberties and (ii) the North Inner City) where sub-city level HNDA analysis was completed. The outcome of these two local HNDAs indicates increased demand for two and three person households and declining demand regarding single person households. Having regard to the analysis the Development Plan requires any application for 15+ residential units in these two areas to have the following unit mix:
 - A minimum of 15% three or more bedroom units.
 - A maximum of 25%-30% one bedroom / studio units

The Development Plan acknowledges the flexibility that SPPR2 of the Apartment Guidelines provides in terms of unit mix and states that each application will be assessed on a case-by-case basis.

- Dual Aspect (15.9.3): Dublin City Council will encourage all developments to meet or exceed 50% dual aspect within the development unless specific site characteristics dictate that a lower percentage may be appropriate. In prime city centre locations, adjoining or adjacent to high quality, high frequency public transport, 33% dual aspect may be accepted in locations where there are specific site constraints such as tight urban infill sites up to 0.25ha or where there is a need to maintain a strong street frontage. North facing units will only be considered where they face an area of high amenity value such as a public park, water body or another significant view of interest.
- Noise (15.9.16.3) The following principles are recommended for minimising disruption from noise in dwellings:
 - Utilise the site and building layout to maximise acoustic privacy by providing good building separation within the development and appropriate noise insulation measures to reduce noise transfer and vibration to neighbouring buildings and noise sources.
 - Arrange units within the development and the internal layout to minimise noise transmission by locating busy, noisy areas next to each other and quieter areas next to quiet areas.
 - Keep stairs, lifts, and service and circulation areas away from noise sensitive rooms like bedrooms. Particular attention should be paid to the siting and acoustic isolation of the lift motor room.
- Section 15.18.9 Noise: Dublin City Council will have regard to the Dublin Agglomeration Noise Action Plan 2018–2023 when assessing planning applications (see also Section 9.5.8: Noise Pollution). Where it is considered that a proposed development is likely to create a disturbance due to noise, a condition may be imposed by the planning authority on any planning permission limiting the hours of operation and level of noise generation. Development proposals for residential development within designated noise zones, such as Dublin Airport Aircraft Noise Zones or which may generate noise sensitive activities should be accompanied by a noise impact assessment to analyse the potential noise impact on the development proposal. The applicant is required to demonstrate good acoustic design has been followed to mitigate against any potential noise impacts.

- Appendix 3 (Achieving Sustainable Compact Growth Policy for Density and Building Height in the City) outlines the Development Plan’s policy in relation to building height, plot ratio and site coverage.
 - **Density:** City Centre and Canal Belt/SDRA - 100-250 net density range (units per ha)
 - **Plot Ratio:** Central Area – 2.5-3.0
 - **Site Coverage:** Central Area – 80%-90%

Higher plot ratio and site coverage may be permitted in certain circumstances such as: • Adjoining major public transport corridors, where an appropriate mix of residential and commercial uses is proposed. To facilitate comprehensive re-development in areas in need of urban renewal. • To maintain existing streetscape profiles. • Where a site already has the benefit of a higher plot ratio. • To facilitate the strategic role of significant institution/employers such as hospitals.

 - **Height:** Table 3: Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale outlines the criteria for assessing proposals in an SDRA, which exceed the guiding principles for that subject SDRA.
 - **Bicycle Parking Standards** – Apartment 1 per bedroom (long term) and 1 per two apartments (short stay/visitor), Retail 1 per 5 staff (long term) and 1 per 100 sq.m GFA (short stay/visitor).
- Appendix 16 outlines the requirements in terms of sunlight and daylight.

5.3. The Liberties Local Area Plan

- 5.3.1. The site was located within the Liberties LAP which was adopted in 2009 and extended in 2014. This LAP expired in May 2020.

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within or close to any European site.

5.5. EIA Screening

- 5.5.1. An Environmental Impact Assessment (EIA) Screening Report was not submitted with the application. With regard to EIA thresholds, Class (10)(b) of Schedule 5 Part 2 of

the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.5.2. It is proposed to construct a mixed-use development containing 33 apartments and 2 retail units. Therefore, the number of dwellings proposed is well below the threshold of 500 dwelling units. The site has an overall area of c. 997 sq m, and is located within an existing built-up area and is, therefore, well below the applicable threshold of 10 ha or 2 ha if the area is considered to be a ‘business district’.

5.5.3. The site is comprised of an existing building and is largely surrounded by urban mixed uses including housing and commercial/industrial developments of varying scale. The introduction of a mixed-use development will not have an adverse impact in environmental terms on surrounding land uses. Whilst the northern section of the site is located with a Conservation Area, it is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site. There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors).

5.5.4. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other development in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Dublin City Council, upon which its effects would be minimal.

5.5.5. Having regard to:

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),

- The location of the site on lands that are zoned ‘Z10 Inner Suburban and Inner City Sustainable Mixed Uses’ under the provisions of the Dublin City Development Plan 2022-2028, and the results of the Strategic Environmental Assessment of the Dublin City Development Plan 2022-2028, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to avoid significant effects by reason of connectivity to any sensitive location,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third-party appeal has been lodged by Teelings Whiskey Company of Newmarket Square, Dublin 8 opposing the Local Authority’s decision. The Appellant advises that DLWC supports the appeal.

The grounds of appeal can be summarised as follows:

- Supports the principle of developing the site, but has concerns from a planning, design and impact perspective. In addition, concerns how the proposal may curtail the neighbouring distilleries' operations.
- Overdevelopment – proposed plot ratio and site coverage are excessive for the area. Proposal does not comply with the Development Plan's assessment criteria for tall buildings. Proposed height is excessive. The building will be the tallest development in Newmarket Square and the surrounds.
- No landscape or visual impact assessment submitted with the application, notwithstanding that the site is partially located within the Newmarket Conservation Area.
- No thorough and accurate assessment of the existing operations of both distilleries from a noise, vibration and odour perspective have been undertaken by the Applicant.
- It would have been quite feasible and proper for the Applicant to have taken readings within the appeal site and at the boundary with either distillery, and at least, taken readings of both noise and odour at an elevated level to appropriate or simulate the likely impact upon upper floors of the proposed development.
- The proposed privacy screens will have no desired impact on limiting noise, vibration and odour.
- Concerned that noise complaints will be received, and curtailments will follow on existing operations and on any future expansion plans the distilleries may have should this development proceed.
- No noise complaints received to date in relation to Teelings' operations, however this will change as a result of the proposed development.
- ICAN Acoustics conducted a noise report on behalf of the Appellant. The assessment and surveys take account of DLWC operations also. The key findings from the ICAN Acoustics assessment include:
 - Teelings' operation is likely to impact a number of the proposed apartments, in particular those on the 2nd floor. This is not assessed by the Applicant.

- Noise levels will be 68dB(A) at the nearest apartment balcony (Apartment B0202).
- Noise periods will extend from 7.00am to 10.00pm. Teelings' hours of operation are unrestricted under Reg. Ref. 3309/13 and as such noise levels of 68dB(A) could be experienced at night.
- The proposal would most definitively result in a definitive adverse impact on the nearest residential properties proposed.
- The Local Authority's Air Quality Monitoring and Noise Control Unit in DCC expressed concern about the impact on residential amenity when permission was granted for Teelings in 2013, at a time when residential properties were at further distances from the distillery site to that of the proposed development.
- Questions the qualifications and experience of the Applicant's noise assessment author.
- The TMS Report does not address the concerns raised in the RFI.
- The TMS Report misapplies the use of ProPG for an application for which it was never intended. It also references the EPA's noise contour maps which have no basis on the correct assessment of noise from either adjoining distilleries.
- Barriers provided by walls and screening will still result in noise levels of 68dB(A) on balcony areas and the design alterations proposed in response to the RFI will have little to no impact on reducing noise or odours.
- Noise levels within the bedroom of Apartment B0202 with windows partially open for ventilation will experience noise levels 18dB(A) above guidance recommended in BS8233:2014 during the day and 23dB(A) greater than the 1999 World Health Organisation Guidelines on Community Noise at night. Noise levels will be 18dB(A) above guidance recommended during the day for the living space and 23dB(A) at night from the balcony of this Apartment.
- No consideration has been given by TMS to potential impacts on vibration.

- Kalestone Environmental was commissioned by the Appellant to undertake a peer review of the TMS odour assessment. The key findings from the peer-review include:
 - The subject site is located downward of the distilleries' odorous emissions with prevailing winds coming from a southwest and west direction.
 - The proposed units will be subject to higher intensity and higher frequency emissions than existing sensitive receptors in the area.
 - TMS' approach does not meet the requirements of any published guidance document, contains illogical elements and is a flawed approach. The sniff-test locations are not considered to be representative of potential future sensitive locations in terms of assessing the proximity or magnitude of odour impacts at elevated receptor locations from thermally buoyant plumes. The number of sniff-test is inadequate to determine the potential for adverse odour impacts as it provides no indication of the range of odours that could potentially be perceived at these locations.
 - TMS provides no link that explains how the results of its sniff tests or the outcome of its interviews with local business people allowed it to reach the conclusion that there is no concern that odour emissions from either distillery of they continue to operate as they do now and have done in the past will lead to unacceptable odour impacts for the proposed residents.
 - It cannot be guaranteed that the odours from the two distilleries will be considered by all people as pleasant or neutral as concluded by TMS.
 - Of the seven sniff-tests conducted by Kalestone, four identified locations that are in accordance with the AG5 score-based methodology meet, or exceeds all the threshold values may be deemed subject to nuisance/significant impairment. This included a sniff-test from the roof level of the Teelings building.
- There are nine balconies in the ATEX risk zone facing west towards the Teelings Distillery and four facing DLWC. Sparking or a single spark could cause combustion. The balconies may be used as smoking areas or for

cooking including the use of gas burners with naked flames and as such present a risk.

- The DLWC final spirits receptor is located immediately adjacent to the eastern gable wall of the site. This is a highly flammable area immediately overlooked by balconies to the south causing unacceptable risk. The DLWC roof currently has a 6-inch flame arrestor immediately over the distillery house and this is significantly at risk from persons using the proposed balconies on the south overlooking Mill Street.
- The tall structures being proposed will inhibit airflow inside and outside of the building. This will potentially have an impact on the distillery to properly vent air from inside the building. Furthermore the cooling water tower vents heat upwards but draws in air into the sides; materials being blown off the proposed balconies could damage distilleries' equipment.
- The appeal proposal will also impact on the potential in-take of fresh air in the distillery, which may impact on visitor experiences in the distilleries.
- Under the 1972 Dangerous Substances Act, the area will now require additional inspection, testing and reporting over and above the standard required which has considerable resourcing and cost issues for both distilleries.
- The proposal would have a negative impact on the proper planning and sustainable development of the area.

6.2. Applicant Response

The Applicant submitted a First-Party Response to the Board on 30th November 2021. The key points can be summarised as follows:

- Strategic planning policy supports the proposed development including policy contained in the National Planning Framework, Apartment Guidelines, and the Development Plan (including the objectives of the SDRA), for high density urban development in accessible locations.
- The Development Plan supports higher density development.

- Neighbouring site on the northern side of Newmarket has permission for a plot ratio of 1:4.86, which significantly exceeds the proposed development. Plot ratio and site coverage are tools that should be considered in conjunction with other standards such as building height.
- The proposal should be considered in the context of the evolving character of the SDRA, which has significantly evolved in recent years into a higher density mixed-use neighbourhood. Photomontages of the proposal in the context of five developments sites to the north and south of the appeal, which have recent planning permission to be redeveloped, are included with the Response. It is clear from this analysis that the proposed massing and height of the proposed development is in keeping and respectful of the prevailing scale/building heights and character of the wider emerging townscape context.
- Photomontages 2 and 3 are from east and west along Mill Street within the designated Conservation Area. The development would not result in the introduction of a visually intrusive or discordant development within this designated Conservation Area. The tallest part of the site will not be visible from the Conservation Area.
- The proposed building would contribute positively to the character and appearance of Mill Street, which is more varied in scale/composition and character than the emerging Newmarket context.
- The Response includes a Comparative Height/Massing Study prepared by Shay Cleary Architects, which outlines the site area, number of units proposed, height, and density for six sites surrounding the appeal site.
- In relation to the Appellant's comments regarding the potential impact the proposed development may have on airflow inside and outside the building, JV Tierney & Co. Mechanical Electrical and Sustainable Engineers prepared a response on behalf of the Applicant stating that it is very unlikely that a neighbouring building would have any impact as suggested by the Appellant regardless of the proposed building height. It is contended that unless the details of a full Computational Fluid Dynamic (CFD) software assessment simulation was submitted to demonstrate otherwise, that it could reasonably be assumed that the proposed neighbouring building will not have any impact on

extract ventilation from inside the adjoining distillery. It is also argued that a cooling tower drawing in air from the sides and mechanically blowing it upwards would not be affected by the proposed neighbouring building. It is argued that without CFD analysis, it is reasonable to assume that such equipment will not be affected.

- The Response includes commentary from GSP Fire Ltd. which highlights that a fire safety certificate was issued previously in respect of the previous permitted development for the site, which included designated external smoking areas. GSP Fire Ltd. is satisfied that the proposals are compliant with the relevant fire safety regulations and external fire spread requirements shall be met. It is a rational approach to ensure that ATEX zones do not cross boundary lines outside the control of the facility.
- The Response includes a rebuttal from TMS in relation to noise, vibration, odour and air emissions. The key points can be summarised as follows:
 - The terms of the planning permissions granted by the Local Authority to the two distilleries (Reg. Refs. 3309/13 and 2162/14, respectively), the codes of practice and other regulations referenced in the planning permissions, and the regulatory requirements set out in the Air Pollution Act and the Environmental Protection Agency Act that the distilleries are obliged to ensure that their activities do not cause noise or air pollution and do not cause a nuisance as a result of noise or odour or emissions to atmosphere. This obligation extends to any and all locations beyond the facility boundary to include the appeal site.
 - The Local Authority has sufficient enforcement powers to regulate and ensure compliance with the terms of the conditions relating to the distilleries to ensure that no significant adverse impacts would arise from their continued operation that may detract from the amenities of the locality, including the future residential amenities of the appealed scheme.
 - The RFI did not ask and could not expect the Applicant to take responsibility for the distilleries achieving compliance with their planning permissions. The Applicant tried to engage with the distilleries in preparing the RFI Response, but no information or co-operation was received.

- The AWN noise impact assessment prepared in respect of the Teelings' application in 2013 outlines the criteria under which the distillery is permitted to operate. It states that the facility will operate during day time hours only between 07:00 and 19:00. The Assessment included the impact of boilers, colling units and extraction fans operating during the night time hours in the event that they are switched on before 07:00. Condition No. 12 attached to the Decision imposes a noise limit to an absolute level of 46dB(A) for night-time and 47-48dB(A) for daytime periods. Similarly, the Byrne Environmental noise impact report prepared in 2014 for DLWC adopted criteria whereby noise levels of 55dB(A) L_{Aeq} and 45dB(A) L_{Aeq} . While most noise sources were noted to operate only during the daytime, it was noted that plant items such as boilers, cooling towers and extractor fans could operate in the early morning and that noise from these plant items will be limited to 45dB(A) L_{Aeq} .
- The AWN air and odour impact assessment prepared in respect of the Teelings' application in 2013 outlines that the proposal would not cause an odour nuisance at or beyond the site boundary. This is condition (No. 14) in the Decision which requires that no emissions including odours shall result in an impairment of amenities or the environment beyond the site boundary and that all emissions should be free from offensive odour outside the process boundary. Similarly, the Byrne Environmental air quality impact report prepared in 2014 for DLWC concluded that "the operation of Dublin Whiskey Company will not result in any adverse impact on local ambient air quality".
- The Local Authority's assessment of the RFI Response was appropriate as the distilleries are bound by the conditions attached to their respective sites.
- TMS categorically refute any assertion that flawed or inappropriate guidance and methodologies were employed for either the noise or odour impact assessment.
- The dominant source of noise in the area is transport noise, the application of ProPG Guidance is entirely appropriate.

- DCC's RFI did not include vibration impact and therefore it is reasonable to conclude that it is not considered significant by the Authority. The planning documentation for the two distilleries only makes reference to vibration in relation to the installation of antivibration mounts on reciprocating plant. There is no condition attached to the distillery sites in relation to vibration and as such it is reasonable to conclude that vibration impacts were not considered significant by the Authority in determining the applications.
- The personnel who carried out the noise impact assessment are all qualified, experienced, professionals with experience ranging from 4 to 30 years in the areas of noise and vibration measurement and consultancy.
- The suggestion that the proposed development will result in noise complaints and curtailment of the distilleries' operations and any future expansion plans are unfounded, misplaced and misinformed since the planning conditions relating to the sites are robust regulating planning conditions which provide all necessary assurances that justifiable cause for noise complaints will not arise provided the condition requirements are being fully complied with.
- It is not correct to state that newly introduced receptors will be more significantly impacted than those that are already there. The conditions attached to the distilleries protect all receptors at or beyond the site boundaries and the same level of protection is afforded to all receptors. It is clear from the conditions (No. 14 Teelings and No. 11 DLWC) that DCC took into account the potential impact of the facilities on receptors in the area and imposed conditions which are aimed at protecting public amenity and residential amenity whilst ensuring the regeneration objectives for this SDRA can be delivered/met in future. The conditions do not differentiate impacts by distance. The maximum allowable impact is at the site boundary.
- It is incorrect to state that receptors located at closer distances and/or downwind of Teelings will be subjected to a higher level of odour impact than those located further away. AWN's assessment focused on a worst-case receptor rather than the closest receptor. The AWN assessment

shows that the area of maximum potential odour impact is to the southeast of the distillery whereas the predicted odour impact at the proposed development site is significantly lower even though the proposed development site is located predominantly downwind of the distillery.

- The conditions are binding and Teelings are obliged to introduce whatever mitigation is required to ensure full compliance with all planning conditions at all times.
- It appears ICAN's measurements are carried out adjacent to the cooling tower and as such what is being measured is a continuous emission from the cooling tower which leads to an exceedance of the planning conditions. In addition to the noise noncompliance, the cooling tower was noted in the assessments submitted with the planning application to operate irregularly and yet there measurements appear to show continuous operation which suggests that the scenario was fabricated to reflect a scenario that is not representative of normal operating conditions and certainly a scenario that is not in accordance with the plans and particulars submitted with the planning application.
- The Applicant is silent on the issue of non-compliance with the conditions attached to the permissions relating to the distillery sites.
- TMS visited the Teelings distillery in a private capacity and attended the Tour. During the Tour no perceptible vibration was detected/noted which would have been expected to be detected when in contact with the foundations if vibration was present at the levels indicated in the survey. Neither were any significant noise sources detected/experienced inside the building or immediately outside the exterior of the facility. If noise levels of 77dB(A) were present it would have been clearly audible.
- The protection afforded by the conditions relating to the distilleries is more than adequate to protect all interests including the protection of the distilleries from justifiable noise complaints from residents in the future. The protection from noise and vibration afforded by the noise conditions is unequivocally and universally applied to all uses outside the Teelings

boundary and the Teeling's operation is bound to comply with those conditions.

- The Kalestone report is deficient in not recognising the conditions regulating the operation of the distilleries and for not considering all the receptors.
- The Kalestone report highlights the AG5 sniff test procedure and the dispersion modelling method yet does not present any information on the latter. However, such an assessment was conducted by Teelings in 2013. TMS could not adopt the methodology due to the lack of co-operation by Teelings and DLWC.
- There are no illogical elements in the assessment, the relevant elements of the assessment followed the guidelines in the EPA AG5 document which is widely used in Ireland for this type of assessment and the approach used the available information to draw professional and informed conclusions about odours at the times of assessment.
- In terms of the number of sniff tests undertaken by TMS, the assessment was undertaken to support an assessment of the potential future impacts of the distilleries on the proposed development and it necessarily involved a limited number of assessments which provide adequate information when considered in a rounded fashion with all other available information.
- The purpose of the sniff assessment was to specifically consider odour on the assessment dates at particular locations which were either at or close to the boundaries or at distances removed from the boundary.

6.3. Planning Authority Response

No response received.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

1. Principle of Development
2. Quantum of Development and Visual Impact
3. Impact on Residential Amenities
4. Other Matters.

Each of these issues is addressed in turn below.

7.2. Principle of Development

7.2.1. The site is zoned for Inner Suburban and Inner City Sustainable Mixed Uses (Z10) in the Development Plan. The proposed mixed-use nature comprising residential and retail development on the site is compatible with the land use objectives, and as such it is my considered opinion that the proposal, subject to qualitative safeguards in respect of design and amenity, is acceptable in principle on the subject site. I reiterate that the site has an extant permission (Reg. Ref. 3322/17) for a mixed-use development comprising a micro-brewery (including ancillary bar and cafe/restaurant use) and office floorspace.

7.3. Quantum of Development

- 7.3.1. The Third-Party Appellant argues that the proposed density is excessive for the site.
- 7.3.2. A total of 33 No. apartments and two ground floor retail units are proposed on the site, which measures 997 sq m. Section 12 of the Planning Application Form states that the net residential floor area is 2,671 sq m (0.2671 ha). As such, the scheme would have a net density of 123 No. units per hectare, which is consistent with the Development Plan's density range for the City Centre and Canal Belt.
- 7.3.3. The site's extant permission ranges in height between 2- to 6- storeys above ground level on Mill Street, and between 4- and 5- storeys above ground level onto Newmarket Square. The proposed building ranges from 5 and 7 storeys above basement level onto Newmarket, and from 2 to 9 storeys onto Mill Street The highest point of the

building is 30.25m (includes lift overrun) along Mill Street. The Planning Authority noted that the proposed height exceeded the former Development Plan's (2016-2022) building height threshold however, the Planning Officer had no objection in principle to the proposed height, having regard to the Building Height Guidelines.

- 7.3.4. Section 13.17 of the new Development Plan highlights that one of the guiding principles for the SDRA is to support 6-8 storeys as a benchmark height for new developments. As outlined above, the SDRA facilitates 'Locally Higher Buildings', defined as "*buildings that are **significantly higher** than their surroundings and are **typically up to 50 metres** in height*" in the Newmarket area, however the subject site is not identified for one of these buildings. Notwithstanding the low-rise nature of the two immediately adjoining sites, having regard to the definition of 'Locally Higher Buildings' provided in Appendix 3 and the height of the recently permitted developments in the area (see Section 4.0 above), I do not consider it appropriate to categorise the proposal as a 'Locally Higher Building'. I note that the Development Plan states that the "guiding principle" is a "benchmark" and is not a maximum threshold, unlike the building height criteria that formed part of the former Development Plan (2016-2022) when the planning application was lodged. I do not consider that the proposed height is a material deviation from the benchmark and is consistent with recently developed sites in the immediate area. Having regard to the city centre location of the site and its proximity to public transport, I consider that, in principle, increased height and density should be encouraged at this location.
- 7.3.5. The Appellant highlights that the proposal's plot ratio (1:4.4) and site coverage (87%) exceed the applicable development management standards for the site. As outlined above, the indicative plot ratio and site coverage for the Central Area is 2.0 – 3.0 and 80-90%, respectively, with a higher allowance in certain circumstances. I highlight that these standards are indicative. Furthermore, the Development Plan facilitates higher plot ratios and site coverages where a site already has the benefit of higher development management standards and in areas in need of urban renewal. I note that the Local Authority raised no concern regarding the proposal's density. Having regard to the above and the site's context, the pattern of development in the area, and the extant permission on site, I do not consider that the proposed plot ratio and site coverage are excessive.

7.3.6. In summary, the proposed development is consistent with the Development Plan's development management criteria (density, height, plot ratio, and site coverage). The site is located in the city centre and is in close proximity to a number of major public transport modes. There are no Protected Structures in the immediate vicinity and whilst the northern section of the site is located in a Conservation Area, I consider the visual impact to be acceptable and consistent with the redevelopment of the area. Furthermore, the proposal does not restrict the potential future development of the adjoining sites, as the scheme was amended at RFI stage to provide for obscured glazing and landscaping privacy screens on the eastern and western elevations. In conclusion, I consider the proposed development, in terms of its overall massing, height and scale, to be appropriate at this location.

7.4. Visual Impact

7.4.1. The Appellant argues that a landscape impact assessment is required to assess the visual impact of the proposed development. I concur with the Local Authority that the photomontages submitted with the application, illustrating the proposal in addition to providing an outline of permitted, but not yet constructed development in the immediate area, provide an accurate representation of the proposed development. I consider that the photomontages are representative of the main views available towards the site and illustrate the visual impact that the proposal will have on the area in terms of height, scale, and architectural treatment. As outlined above, only a small section of the site lies within the Conservation Area. The proposal is stepped down to five storeys along Newmarket. In my view, the choice of materials and their use, particularly on the eastern and western elevations, will positively contribute to the area. Having regard to the proposal's design, I do not consider it will negatively impact on the conservation area. As stated above, I consider the proposal's height, scale and massing to be acceptable. While the proposal will appear dominant in comparison to the two adjoining sites, in my opinion, it will integrate successfully within the wider area (see photomontages attached to the Architectural Design Report). In summary, I do not consider that a landscape impact assessment is required, as the photomontages and architectural drawings provide sufficient detail to assess the visual impact of the proposal in the townscape and determine the appeal.

7.5. Impact on Residential Amenities

- 7.5.1. The Appellant's primary concerns relate to the potential impact that the adjoining distilleries may have on the future residents of the proposed development, particularly in relation to noise and odour emissions.

Noise

- 7.5.2. As outlined in Section 6.0 above, the Appellant is concerned that noise complaints will be received, and curtailments will follow on existing operations and on any future expansion plans the neighbouring distilleries may have, should the development proceed. The Appellant highlights that no noise complaints have been received since the distilleries commenced operation. On foot of similar concerns relayed to the Local Authority by the Appellant, a RFI was issued requesting the Applicant to demonstrate that the proposed development includes measures to minimise impacts (including noise, fumes, heat etc) arising from the operation of the adjacent commercial premises on future occupiers of the apartments. The Applicant submitted an *Odour and Inward Noise Impact Assessment Report*, which in summary advised that the site can be categorised as low risk from a noise perspective for daytime and medium risk at night time in accordance with the ProPG methodology. The report identifies that, by virtue of the location of the residential units as far away from the road and adjoining buildings as possible, location of amenity on the screened side of buildings and the orientations of the buildings, the proposed design incorporates good acoustic design principles. Consequently, the proposed units would meet the requirements of BS8233 and the WHO guidance and no further mitigation is required.
- 7.5.3. The Appellant argues that the Applicant's response is insufficient, highlighting that the closest sensitive receptors (the closest being the balcony for Apartment B02020 on the second floor) were not assessed by the Applicant, despite the Teelings' water cooling tower being located 2-3m from this subject balcony. ICAN's (on behalf of the Appellant) result show noise levels will be 68dB(A) at the subject balcony (Apartment B0202). The Appellant states that noise levels within the bedroom of Apartment B0202 with windows partially open for ventilation will experience noise levels 18dB(A) above guidance recommended during the day and 23dB(A) at night. Noise levels will be 18dB(A) above guidance recommended during the day for the living space and 23dB(A) at night from the balcony of this Apartment.

- 7.5.4. As outlined in Section 6.3 above, the Applicant refutes the Appellant's findings principally on the grounds that it is contended that the distilleries are bound by the planning conditions attached to their respective permissions (i.e. Reg. Refs. 3309/13 and 2162/14) – see Section 4.0 above. In short, the Applicant's stance is that it is irrelevant how close sensitive receptors, including residential development, are to the distilleries, as the maximum permissible noise limits are set at the boundaries of the distillery sites. The Applicant claims that a breach of the noise limits beyond the boundaries of the distilleries that are stipulated in the Conditions, is an enforcement matter for the attention of the Local Authority.
- 7.5.5. Having reviewed the documentation submitted as part of the planning applications for the two distilleries, the distilleries' respective Permissions, and the documentation on this file, I consider the Applicant's interpretation of the subject Conditions attached to these Permissions in terms of noise, to be reasonable. The wording of the Conditions is clear in that the "*noise levels should not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in **any premises in the neighbourhood***", and is not solely limited to the noise sensitive receptors identified in the planning applications for the distilleries. There is no time limit specified in the Conditions - the subject Permissions were not temporary - as such, in my view, the restrictions continue to apply to the sites irrespective of what development may occur in the surrounding area or at what distance it may occur at in relation to the distilleries. As highlighted by the Applicant, the Conditions attached to the distilleries' Permissions were not contested or appealed to the Board at the applicable time. Similar to the Local Authority, I note the contribution that both the distilleries make to the vitality and vibrancy of the area and the role they played in acting as catalysts for the redevelopment of the area in the past. Notwithstanding this, in my opinion, the wording of the Conditions attached to the distilleries' Permissions is clear, in that the responsibility of ensuring that the noise emissions from the distilleries do not cause a nuisance to a person in any premises in the neighbourhood lies with the distillery operators. The Conditions make provision for the implementation of mitigation measures if they are required. In my opinion, should the Applicant's interpretation not be accepted, the development of the distilleries in the city centre could have essentially sterilised or severely restricted the development of other third-party lands, which I consider would have been contrary to the SDRA

objectives for the area and the applicable land use zoning objectives in the area. I note that the Appellant did not raise similar concerns in relation to the extant permission at the time it was being assessed by the Local Authority. I consider the Conditions to be standard having regard to the industrial nature of the use in a city centre and are within the proper planning and sustainable development of the area.

7.5.6. In terms of operating hours, I note that the Appellant states that the distilleries' hours of operation are unrestricted. I concur with the Applicant that Condition No. 1 attached to both the distilleries' Permissions, require that the facilities must operate in accordance with the plans and particulars that were submitted in respect of the subject applications. In this regard, AWN's Noise Impact Assessment (dated 12th September 2013) for Teelings states that "*the proposed distillery will operate during daytime hours only i.e. between 07:00 to 19:00hrs for the distillery. Proposed opening hours for the visitor centre are between 10:00 and 17:30hrs.... Plant items will be switched off typically beyond 19:00hrs inclusive of the boiler, cooling towers, and CO₂ extraction fan. There is, however, a potential for these plant items to operate between the hours of 06:00 and 07:00hrs depending on the delivery schedule*". In my opinion, if the distillery was to commence operating throughout the night, it may result in a significant intensification of use that may have potentially negative impacts on the surrounding area. However, in my view, having regard to the Conditions regulating the operation of the distillery, the assessment of such impacts, is not applicable to this case.

7.5.7. With respect to the Appellant's argument that the use of the ProPG methodology is not applicable, the Applicant states that the subject methodology was used as traffic is the dominant noise in the area. The Applicant highlights that the ProPG guidance states: "*the recommended approach is also considered suitable where some industrial or commercial noise contributes to the acoustic environment provided that it is not dominant*". As traffic was identified to be the dominant noise source when the distillery was granted permission in 2014 and in the preparation of the subject application, I consider the methodology to be acceptable. I noted traffic and construction activity to be the dominant noise sources in the area on my site visit, which occurred on a bright, calm morning in November, however I highlight that a low-level humming noise was audible at the site boundary on Mill Street. Having regard to the location and nature of the proposal and neighbouring sites and Section 15.18.9 of the Development Plan, I concur with the Applicant that reference to the EPA's Strategic Noise Maps is a useful

benchmark for comparison purposes in defining the baseline noise levels. I acknowledge the Applicant's attempts to source additional information from the Appellant, however I note that this was not forthcoming. I consider the methodology adopted to be reasonable having regard to the level of information available. Furthermore, I consider that the assessment and TMS' Response to the Appeal was conducted by competent professionals and is sufficiently robust for the application to be determined.

- 7.5.8. In relation to vibration, the Appellant highlights that no assessment was undertaken in respect to this matter. TMS highlight that vibration measurements were carried out by acoustic consultants on the foundation slab of the distillery and that the report identifies the principal sources of vibration at the plant. The Response states: "*Since the sources were not identified in the assessments that were submitted with the planning application, it was not considered a significant potential impact when the assessment methodology was formulated.... It was therefore concluded that this was not a significant factor and no further consideration was given to this aspect.*" Furthermore, the TMS response states that no perceptible vibration was detected/noted during a visit of the tour. In addition, I note that the Local Authority was satisfied with the proposal in this respect. I do not consider that there is sufficient empirical or technical evidence on the file to refuse permission for the proposed development on this basis.
- 7.5.9. In conclusion, I consider that it is the responsibility of the distillery operators to ensure that noise emissions from the facilities do not breach the thresholds specified in the Conditions attached to their Permissions. Should the noise levels exceed the thresholds, the Conditions make provision for the implementation of mitigation measures. In terms of potential non-compliance matters with the distilleries' Permissions, I highlight that such matters are for the Local Authority to consider. As stated by the Appellant there have been no noise complaints received to date relating to the distilleries, notwithstanding that there has been a significant increase in residential development in the area since the distilleries commenced operating, albeit at distances further than that of the proposed development to the distilleries. I note that the DLWC permission (Reg. Ref. 2162/14) included a duplex care-taker's apartment. However, it is unclear if this apartment was constructed and is in use on the site. Having regard to the foregoing, I do not consider that specific noise mitigation measures are required to be incorporated into the proposed development and I

consider that subject to the noise related Conditions attached to the distilleries being implemented, there should be no loss of residential amenity to future residents. As such, I do not recommend that permission is refused for the proposal on the grounds of a potential reduction in residential amenity due to noise levels from the neighbouring distilleries.

Odour

- 7.5.10. Similar to the concerns raised in relation to noise emissions, the Appellant expresses concerns that complaints may be received from future residents of the proposed development with regard to odour emissions from the distillery, as the subject site is located downwind of the Teelings' facility. The Appellant argues that the Applicant's sniff tests were inadequate (due to the number and location of the tests) to determine the potential odour impacts from the distillery on the proposed development. The Appellant commissioned Kalestone to undertake a peer review of TMS' odour assessment that was submitted as part of the RFI Response. Kalestone report that TMS' approach does not meet the requirements of any published guidance document, contains illogical elements and is a flawed approach. The sniff-test locations are not considered to be representative of potential future sensitive locations in terms of assessing the proximity or magnitude of odour impacts at elevated receptor locations from thermally buoyant plumes. Kalestone conducted its own sniff test and found that of seven sniff-tests, four locations were identified were the AG5 score-based methodology meet or exceeds all the threshold values that may be deemed subject to nuisance/significant impairment.
- 7.5.11. I consider the Applicant's odour assessment to be reasonable having regard to the availability of information and adequate for the purposes of determining the application. I note that the Appellant did not produce an air dispersion model (AG4) despite having access to the information necessary to complete such an assessment. Rather, the Appellant adopted the sniff-test (AG5) approach similar to the Applicant. Furthermore, I note that the Appellant highlights that no odour complaints have been received in relation to the distilleries' operations.
- 7.5.12. The TMS' Response on behalf of the Applicant, in a similar manner to the Response regarding the noise concerns, argues that the Conditions attached to the distilleries' Permissions restrict odour emissions from the facilities. I concur that the wording is

very clear: **No emissions, including odours, from the activities carried on at the site shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary.** b) All emissions to air associated with the development, other than steam or water vapour, should be colourless and free from visible mist. **All emissions should be free from offensive odour outside the process boundary.** (Bold: My emphasis.) Furthermore, the Applicant highlights that, notwithstanding the requirements of the subject Conditions as outlined in Section 4.0 above, the AWN assessment prepared in respect of the Teelings application in 2013 shows that the area of maximum potential odour impact is to the southeast of the distillery whereas the predicted odour impact at the proposed development site is significantly lower even though the proposed development site is located predominantly downwind of the distillery.

7.5.13. I did not note any adverse odours in the area during my site visit. As outlined above, any potential non-compliance matters relating to noise and/or odour emissions from the distilleries is a matter for the Local Authority to consider. Having regard to the foregoing, I do not consider that specific odour mitigation measures are required to be incorporated into the proposed development and I consider that subject to the odour related Conditions attached to the distilleries' Permissions being implemented, there should be no loss of residential amenity to future residents. As such, I do not recommend that permission is refused for the proposal on the grounds of a potential reduction in residential amenity due to odour emissions from the neighbouring distilleries.

Architectural Design

7.5.14. The Appellant has not raised any concerns with regard to the residential amenity beyond the potential impact that the adjoining distilleries may have on the future residents in terms of noise and odour emissions.

7.5.15. The Planning Authority have raised no significant concerns in relation to the proposed apartment standards. As stated above, the proposal is located in a 'Central and/or Accessible Urban Location' as described in Section 2.4 of the Apartment Guidelines. The development includes 33 No. residential apartments comprising 6 No. 1 bedroom units; 25 No. 2 bedroom units (4 No. 2-bed (3 person) and 21 No. 2-bed (4 person));

and 2 No. 3 bedroom units (one 3-bed (6 person) and one 3-bed (5 person)) and as such is compliant with SPPR 1. The proposal is not compliant with the Development Plan's housing mix for the area, which as outlined in Section 5.2 above requires a minimum of 15% three or more bedroom units. However, the Development Plan highlights that SPPR2 of the Apartment Guidelines provides some flexibility in terms of unit mix for building refurbishment schemes on urban infill schemes on sites up to 0.25 ha. The Development Plan states that "*The planning authority will assess each application having regard to SPPR 2 on a case by case basis*". Having regard to the overall standard and mix of units of accommodation proposed, I consider the proposal in this instance to be acceptable. Furthermore, I note that the proposal is not compliant with Section 3.7 the 2020 Apartment Guidelines that requires no more than 10% of the total number of units in any private residential development may comprise of two-bedroom three-person apartment. Having regard to the fact that the proposal only marginally exceeds the requirement, I consider it to be acceptable and do not recommend that permission is refused on this basis. I consider the overall mix of unit types to be acceptable. Furthermore, as noted in the schedule of accommodation, the units are generally compliant with the Guideline's minimum overall floor areas, room sizes, ceiling height, lifts and staircores, storage areas and dual aspect requirements. Bin storage is accommodated at basement level in Block A.

7.5.16. In terms of private open space, I note that the proposal is compliant with the Guidelines with the exception of four units which have no such amenity space. The four units are north facing and comprise four 2-bed (3 person) units. As highlighted by the Local Authority the four 2-bed units exceed the overall floor area requirements for such units, which provides some compensation for the lack of external amenity space. While there is no public open space proposed, all residents will have access to 298 sq m of outdoor communal open space divided between a central courtyard at ground level and two roof terraces at Level 6. This area exceeds the Apartment Guidelines' requirement for 219 sq m. I am satisfied that the lack of public open space can be satisfactorily addressed by means of a financial contribution in lieu of the public open space. Having regard to the provision of communal open space and the scheme's general compliance with the Apartment Guidelines, I consider the lack of private open space to the four units to be acceptable.

7.5.17. The Applicant submitted a Daylight, Sunlight and Overshadowing Study (14th January 2021) with the planning application. The Report demonstrates that the proposal would not significantly impact adjacent amenity areas, which would continue to receive at least 2hours of sunlight on 21st March across 50% of the area. The Report states that 53% of the 219 sqm of open space required (298 sqm proposed) would receive at least 2hours of sunlight on 21st March. In terms of daylight, the Report highlights that 93% of all habitable rooms would meet the BRE standard in respect of ADF. As highlighted by the Local Authority the rooms which do not meet the standard are south facing and likely impacted by the scheme itself and neighbouring development. These rooms achieve c. 80% of the BRE standard and, for the most part, two rooms in the same unit are not affected. Having regard to the site's location in a built-up area of the city centre, I consider the results acceptable. Furthermore, I highlight that the mandatory application of the BRE standards is not required by the Development Plan (Section 7.0 of Appendix 16) or by Section 28 Ministerial guidelines. In terms of daylight impacts on neighbouring developments, the Report states that of the 190 tested windows in adjacent buildings, 179 achieve a vertical sky component of greater than 27% or 80%, with 11 No. achieving VSC results between 17.62 and 27. Having regard to the site's city centre location and planning policy to develop high-density brownfield urban sites, I consider the proposal to be acceptable in this regard.

7.5.18. The Apartment Guidelines state that cycle storage facilities shall be provided in a dedicated facility of permanent construction, preferably within the building footprint. A secure bicycle parking store has been provided at basement level including two non-standard/accessible bicycle parking spaces in the form of Low-level Sheffield stands. A total of 81 No. cycle spaces are proposed (62 residential, 17 visitor and 2 retail). The 62 residential spaces are to be separated from the 17 visitor spaces by a caged wall. Fob/code access is proposed to access this area.

7.5.19. I note that the proposal does not include any car parking spaces, however having regard to the site's location in the city centre and the proximity to public transport in the area, I consider this aspect of the proposal to be acceptable.

Conclusion on Residential Standards

7.5.20. Having regard to the above, I am satisfied that the proposed development would provide appropriately designed and sized internal and external spaces. The scheme

is acceptable in accordance with the Apartment Guidelines provisions and would provide a suitable standard of residential amenity for the prospective occupants. Having regard to the Conditions attached to the distilleries' Permissions, I do not consider that their operations are likely to negatively impact on future residents of the proposed scheme. Furthermore, as highlighted by the Applicant, the distilleries are obligated to comply with other regulatory requirements such as the Air Pollution Act and the Environmental Protection Agency Act. In conclusion, I consider the proposal is consistent with the proper planning and sustainable development of the area.

7.6. Other Matters

Fire and Ventilation

The Appellant states the risk of a fire may increase as a result of the proposed balconies proximity to the distillery. Furthermore, concerns are raised in relation to the ventilation of the distillery. The Appellant argues that under the 1972 Dangerous Substances Act, the area will now require additional inspection, testing and reporting over and above the standard required which has considerable resourcing and cost issues for both distilleries. In response to the Appellant's concerns JV Tierney & Co. Mechanical Electrical and Sustainable Engineers, on behalf of the Applicant, states that it is very unlikely that the proposal would impact the airflow inside and outside the neighbouring building, but it is argued that without CFD analysis, it is reasonable to assume that such equipment will not be affected. In response to the fire concerns GSP Fire Ltd. on behalf of the Applicant confirms that it is satisfied that the proposals are compliant with the relevant fire safety regulations and external fire spread requirements shall be met. I do not consider that there is sufficient technical or empirical evidence on the file supporting these matters raised by the Appellant to justify refusing permission for the development. Furthermore, I highlight that these issues will be evaluated under separate legal codes and thus need not concern the Board for the purposes of this appeal.

Construction Impacts

I consider that any construction disturbance impacts on adjoining properties will be only temporary and are inevitable and unavoidable aspects associated with urban development. I am satisfied that this matter can be satisfactorily agreed by conditions

requiring the submission of construction management proposals to address any impacts.

8.0 Appropriate Assessment

- 8.1.1. The nearest Natura 2000 sites are the South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC which are located approximately 4km to the east of the site. There are several other Natura 2000 sites in the wider Dublin Bay area to the east, including North Bull Island SPA and North Dublin Bay SAC. The site is not, therefore, located within or adjoining any Natura 2000 Sites, and there are no direct pathways between the site and the Natura 2000 network.
- 8.1.2. I am aware that there are potential indirect connections to the Natura 2000 sites within Dublin Bay via watercourses, groundwater discharge, and the wider drainage network. There is also an indirect connection via the wastewater network which outfalls to Dublin Bay via the Ringsend WWTP. However, the existence of these potential pathways does not necessarily mean that potential significant impacts will arise.
- 8.1.3. There are no surface watercourses in the immediate vicinity of the site that would provide a pathway to the Natura 2000 network. I note that surface water will be collected and discharged to the combined sewer system at this location and will not discharge to groundwater. The combined storm/foul water emissions from the development would result in an increased loading on the Ringsend WWTP. However, there is known potential for the waters in Dublin Bay to rapidly mix and assimilate pollutants. Therefore, having regard to the limited scale of the development and the associated discharges; the 'unpolluted' EPA classification of the coastal waters in Dublin Bay and the dilution capacity of these waters; and the capacity of the Ringsend WWTP; I am satisfied that there is no possibility that the additional loading resulting from the development will result in significant effects on European sites within Dublin Bay.
- 8.1.4. GSI mapping indicates that groundwater vulnerability is low at this location, and I am satisfied that any excavation or ground disturbance would not be likely to impact on the quality of groundwater. Furthermore, there is a significant separation distance between the appeal site and the nearest Natura 2000 sites, which would provide

significant dilution capacity in the unlikely event of any such impacts on groundwater quality.

- 8.1.5. I am satisfied that any proposals incorporated within the development, including surface water management proposals, constitute standard best practice and that no mitigation measures are relied upon for Appropriate Assessment screening. Having regard to the above preliminary examination, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

9.0 Recommendation

- 9.1. I recommend that planning permission be granted, subject to the conditions outlined below.

10.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, the site's city centre location, the proximity to a wide range of public transport options, the provisions of the Dublin City Council Development Plan 2022-2028, the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in 2020 and the updated 2022 version, the Urban Development and Building Heights - Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December, 2018, and the National Planning Framework, which seeks for compact development of brownfield sites, the pattern and character of development in the area and the design and scale of the proposed development and site's planning history, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this city centre location, would not seriously injure the residential or visual amenity of the area, would be acceptable in terms of urban design, height and quantum of development and would not conflict with neighbouring land uses. The proposed

development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to An Bord Pleanála on the 10th day of September, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>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>All external lighting details to be submitted and agreed with the Local Authority prior to the commencement of the development.</p> <p>Reason: In the interests of visual and residential amenities.</p>
4.	<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 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>
5.	<p>No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication</p>

	<p>antennas, shall be erected at roof level other than those shown on the plans and particulars lodged with the application. All equipment such as extraction ventilation systems and refrigerator condenser units shall be insulated and positioned so as not to cause noise, odour or nuisance at sensitive locations.</p> <p>Reason: In the interests of visual and residential amenities.</p>
6.	<p>No signage, advertising structures/advertisements, security shutters or other projecting elements, including flagpoles, shall be erected on the building or within the site unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
7.	<p>Prior to the commencement of works above ground level, full details of the proposed shopfronts (including materials, colour, fascia and any security measures) shall first be submitted to and agreed in writing with the Planning Authority.</p> <p>A window display shall be maintained to both retail units at all times, and the glazing to the shopfronts shall be kept free of all stickers, posters and advertisements.</p> <p>Reason: In the interests of visual amenity.</p>
8.	<p>The proposed retail units shall operate only during the hours of 7am and 10pm any day of the week, unless otherwise agreed in writing with the Planning Authority.</p> <p>Reason: In the interests of orderly development, residential amenity, proper planning and sustainable development.</p>
9.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and</p>

	<p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues: (i) the nature and location of archaeological material on the site, and (ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.</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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
10.	<p>The naming and numbering of streets, buildings and business or dwelling units shall be in accordance with a street naming and numbering scheme submitted to, and agreed in writing by, the planning authority. The names selected shall reflect local place names, or be of local historical interest, and be in both Irish and English and shall be installed on site prior to the occupation of the scheme. The applicant shall consult with Dublin City Council's Irish Officer in relation to the translation of names.</p> <p>Reason: In the interests of orderly street naming and numbering; to enhance urban legibility, and to retain local place name associations.</p>
11.	<p>The site development and construction works shall be carried out in such a manner so as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.</p>

	Reason: To ensure that the adjoining roadways are kept in a clean and safe conditions during construction works in the interest of orderly development.
12.	<p>Site development and building works shall be carried out only between the hours of 0700 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 subject to the prior written agreement of the planning authority.</p> <p>Reason: In the interest of residential amenities of surrounding properties and in the interest of clarity.</p>
13.	<p>The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide inter alia: details and location of proposed construction compounds, details of intended construction practice for the development, including hours of working, noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
14.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, and shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p>

	Reason: In the interest of sustainable waste management.
15.	<p>(a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>(b) The plan shall provide for screened communal bin stores, which shall be adequately ventilated, drained and illuminated. The design and location of same shall be included in the details to be submitted.</p> <p>Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.</p>
16.	<p>Drainage arrangements, including the 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>
17.	<p>Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
18.	<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 public open spaces, 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>
19.	<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</p>

	<p>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>
20.	<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>
21.	<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.</p> <p>The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be</p>

	<p>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>
22.	<p>The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City 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 2000, as amended.</p> <p>The contribution shall be paid prior to the 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>

Susan Clarke
 Planning Inspector

23rd December 2022