



An
Bord
Pleanála

Inspector's Report

ABP-312043-21

Development	Demolition to rear of site to allow construction of 9 apartments and associated site works.
Location	18, Merrion Road, Nos 1 and 2 Ballsbridge Avenue, Ballsbridge, Dublin 4
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2685/21
Applicant(s)	Merrion Courtyard Ltd.
Type of Application	Planning Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party Appeal First Party Appeal
Appellant(s)	Seamus Fitzpatrick Merrion Courtyard Ltd.
Observer(s)	An Taisce Joan and Peter Brady Philip O'Reilly

Les and Mary McClure

Date of Site Inspection

16th December 2022

Inspector

Susan Clarke

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1.0 Site Location and Description

- 1.1.1. The irregular shaped site, measuring 515 sq m, is located on the northern side of Merrion Road, at the corner of Ballsbridge Park and Merrion Road, just south-east of its junction with Shelbourne Road, across the road from the RDS and approximately 2km southeast of the city centre area. The site extends to the rear of Nos. 14 and 16 Merrion Road and Nos. 1-3 Ballsbridge Avenue.
- 1.1.2. The three storey plus attic accommodation, redbrick, semi-detached building has a part 1 and part 2 storey rear extension and is located in the centre of Ballsbridge village. Ballsbridge Avenue consists mainly of single-storey, terraced housing on narrow plots. No. 1 Ballsbridge is in office use, while No. 2 Ballsbridge is in residential use. These units front directly onto the street with no front gardens or set backs. The cottages are located on the western side of Ballsbridge Avenue and the eastern side is defined by a mature hedgerow which separates the street from Ballsbridge Park. The section of Merrion Road between Ballsbridge Park and the River Dodder to the west is primarily commercial with a mix of retail and cafes/restaurant uses at ground floor level with either offices or apartments on the upper floors. The River Dodder is located approx. 100m southwest of the site.
- 1.1.3. The site is located at the end of a row of buildings with mixed architectural character, which comprises a pharmacy, pub, restaurant, convenience shop, and betting shop. Base, pizza take-away, is located in the Ground Floor unit of No. 18 fronting Merrion Road, but is not included within the subject application. This ground floor unit has a traditional style shopfront, with a stone quoin and pilaster at the southern end. The upper floors at the front, which I understand are currently vacant, comprise an attractive red-bricked façade with vertical window openings. There is a traditional railing and plinth projecting from the pilaster towards Merrion Road. The pavement immediately to the east of this railing and the side boundary wall of the house is wide and includes a creeper covered wall and a tree (in the middle of the pavement), which runs parallel to the side elevation of the appeal premises. This side elevation is composed of coursed random rubble at ground floor with a brown brick on the upper levels. There is a three-storey annex at the rear which seems to have a slightly lower FFL. There is a gated entrance immediately behind the annex which leads to an L-shaped courtyard, which wraps around the rear/side of the annex. There is an informal

hard-standing area immediately outside this side entrance, which has public seating and trees.

- 1.1.4. The immediate and wider area has been significantly redeveloped in recent years, including the site south of the subject site (No. 20 Merrion Road) for a part 4, part 6 storey building comprising office and restaurant, the redevelopment of the former AIB lands at Merrion Road/Serpentine Avenue, and a number of largescale redevelopments on Shelbourne Road.

2.0 Proposed Development

2.1. The proposed development comprises:

- Demolition of 1st & 2nd floor rear extension to No. 18 Merrion Road, single storey elements to rear of No. 1 and 2 Ballsbridge Avenue and ancillary single storey sheds and outbuildings in the associated rear yards (total demolition area 264 sq m)
- Construction of 9 No. residential units in a part 1/2/3 storey building accessed off Ballsbridge Avenue comprising 2 No. studios, 5 No. 1-bed, and 2 No. 2-bed,
- No. 1 Ballsbridge Avenue is to remain in office use at ground floor level, with refurbished interior,
- Provision of 16 bicycle parking spaces,
- Provision of a bin storage area at ground floor level on Ballsbridge Avenue, and
- Landscaping, plant, boundary treatment, site development works and site services above and below ground.

2.1.1. Six of the residential units are to be located in the new rear extension to No. 18, while the remaining three would be located at 1st and 2nd floor level of No. 18 Merrion Road and No. 2 Ballsbridge Avenue.

2.1.2. The existing ground floor restaurant at 18 Merrion Road is excluded from the application.

2.1.3. Following a request for further information, the south-eastern elevation of the rear new building element of the proposal was amended with the original projecting curved section omitted, alterations to the amenity space, apartments' storage provision, and

provision of a roof terrace (100 sq m) with single stair core and lift provided for access to same, a covered bicycle store for Unit 3, and an extension to the rear of No. 2 Ballsbridge Avenue.

2.1.4. The site is served with a 300mm diameter Vitrified clay combined sewer running from north to south on Ballsbridge Park, connecting to a 375mm diameter Vitrified Clay combined sewer running a west to east on Merrion Road. It is proposed to retain the existing foul connection to the network servicing the building at No. 18 Merrion Road. A new foul network within the site will collect the foul generated from the new units and discharge to the existing foul connection from No. 2 Ballsbridge Avenue. SuDS measures proposed include green roofs and permeable paving. The site is served with a 150mm diameter cast iron watermain on Merrion Road with a 75mm cast iron water main running from south to north along Ballsbridge Avenue. The Applicant advises that it is assumed that the properties on Merrion Road and Ballsbridge Avenue have existing water main connections and that an application for an increased connection to facilitate the development would be to Irish Water.

2.2. Along with the standard drawings and information, the application included the following reports:

- Planning Application Report
- Planning Application (Architectural Statement)
- Water Services Report
- Photomontages
- Sunlight, Daylight & Shadow Assessment (Impact Neighbours and Development Performance), Rev. V3a
- Site Specific Flood Risk Assessment Report
- Preliminary BER Reports

As part of the RFI Response the following was submitted:

- Planning Cover Letter
- Architect's Report
- Engineer's Response Letter

- Shadow Assessment (Addendum 2)
- Photomontages.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Notification of Decision to Grant Permission on 28th October 2021 subject to 13 No. conditions.

Condition No. 4 states:

The development shall be revised as follows:

a) The proposed roof terrace and access to same shall be omitted.

b) Unit no.3 shall be omitted and the resultant site area shall be used for bicycle parking and additional communal open space. All bicycle parking shall be removed from its current proposed location in the courtyard area. Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings:

Reason: In the interests of orderly development, residential and visual amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Reports forms the basis of the Local Authority's decision.

There are two Planning Reports on file dated 23rd June 2021 and 28th October 2021, respectively. The Planning Officer in the former report refers to the policy context for the development, the site's planning history and the Observations made to the Local Authority during the public consultation period. The Officer noted *inter alia*:

- Unit 4 (43 sq m) is not compliant with the Apartment Guidelines floor space requirements.

- Insufficient storage space for Unit 3.
- Units 7 and 9 have not external amenity space
- Overbearing impacts on the units fronting Ballsbridge Avenue
- Concerns regarding the quality of the communal open space provision and overshadowing
- Highlights that two of the bicycle spaces are not covered.

The latter Planner's Report (dated 28th October 2021) refers to the further information submitted and considered that, having regard to the additional information and subject to the omission of the proposed roof terrace and Unit 3 to make provision for additional communal open space, should be granted permission subject to 13 No. conditions.

3.2.2. Other Technical Reports

Transportation Section (18th June 2021 and 20th October 2021): No objection, subject to condition.

Drainage Section (21st May 2021 and 7th October 2021): No objection, subject to condition.

Senior Environmental Health Officer (Not dated): No objection, subject to condition.

3.3. Prescribed Bodies

An Taisce (2nd June 2021): The proposed scale, mass and proximity of the proposal would detrimentally impact on the amenities and setting of the adjacent single-storey artisan cottages at Ballsbridge Avenue, which are part of the heritage and character of Ballsbridge Village. Recommends that the proposal is amended to address the above concerns.

Irish Water: No comments received.

Irish Rail: No comments received.

3.4. Third Party Observations

Seventeen observations from local residents were submitted to the Local Authority opposing the proposed development. The key points raised in the Observations can be summarised as follows:

- Overdevelopment, excessive height, scale and massing
- Visually obtrusive and negative impact on the character and setting of the area
- Overlooking and loss of privacy
- Reduced residential amenity for neighbouring residents
- Lack of public consultation
- Traffic hazard and car parking congestion
- Inadequate bin storage
- Loss of daylight
- Depreciation of neighbouring property values
- Establishment of poor precedent of development for the area
- Permission refused previously in the area for similarly oversized developments.

4.0 Planning History

Subject Site

DCC Reg. Ref. 3667/10; ABP Ref. PL29S.238514: An Bord Pleanála granted permission in June 2011 for an extension to rear of No. 18, change of use of ground floor from shop to pizza bakery and restaurant to include sale of hot food for consumption on and off the premises, and new signage.

No. 20 Merrion Road

DCC Reg. Ref. 3879/20; ABP Ref. 309610-21: The Local Authority granted permission in February 2021 for an additional floor over approved four storey front block facing Merrion Road which will increase building height at this point from four storeys to five storeys and 17.3m to 21.125m. The addition of an additional floor over the approved six storey rear block and building core which will increase overall building

height from six to seven storeys and from 25.1m to 28.925m. This decision was subsequently appeal to An Bord Pleanála. At the time of writing this report, a decision from the Board was pending.

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.

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.

5.2. **Dublin City Development Plan 2022-2028**

5.2.1. 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.

5.2.2. The section of the site fronting Merrion Road is zoned Z4 “Key Urban Villages/Urban Villages” with the aim “*To provide for and improve mixed-services facilities*”, while the area behind No. 18 Merrion Road and Nos. 1 and 2 Ballsbridge Avenue are zoned Z1 “Sustainable Residential Neighbourhoods” which has the aim “*To protect, provide and improve residential amenities*”. Residential is listed as a ‘permissible use’ under both land use zoning objectives, while Office is listed as a ‘permissible use’ under Z4, it is ‘open for consideration’ under Z1.

5.2.3. The site is not located in a conservation area, however it abuts the River Dodder Conservation Area.

5.2.4. Chapter 5 of the Development Plan relates to Quality Housing and Sustainable Neighbourhoods. Key Policies include:

- QHSN6: Urban Consolidation *To promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development, backland development, mews development, re-use/adaption of existing housing stock and use of upper floors, subject to the provision of good quality accommodation.*
- QHSN10: Urban Density *To promote residential development at sustainable densities throughout the city in accordance with the Core Strategy, particularly on vacant and/or underutilised sites, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.*
- QHSNO4: Densification of Suburbs *To support the ongoing densification of the suburbs and prepare a design guide regarding innovative housing models, designs and solutions for infill development, backland development, mews development, re-use of existing housing stock and best practice for attic conversions.*

5.2.5. Chapter 15 outlines the Plan’s development management standards:

- 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 15.8.10 Gated Communities

- Section 15.9 Apartment Standards
- Section 15.13.4 Backland Housing
- 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:** Outer Suburbs – 60-120 net density range (units per ha)
- **Plot Ratio:** Outer Employment and Residential Area 1.0-2.5
- **Site Coverage:** Outer Employment and Residential Area – 45-60%

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:** Outside of the canal ring, in the suburban areas of the city, in accordance with the guidelines, heights of 3 to 4 storeys will be promoted as the minimum. Greater heights will be considered on a case by case basis, having regard in particular to the prevailing site context and character, physical and social infrastructure capacity, public transport capacity and compliance with all of the performance criteria set out in Table 3.

- **Bicycle Parking Standards** – Apartment 1 per bedroom (long term) and 1 per two apartments (short stay/visitor)
- Appendix 16 outlines the requirements in terms of sunlight and daylight.

5.3. Natural Heritage Designations

The Grand Canal Proposed Natural Heritage Area is located c. 1km to the northwest of the site. The nearest Natura 2000 sites are the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC, both located c. 1.5km to the east of the site.

5.4. EIA Screening

- 5.4.1. On the issue of environmental impact assessment screening I note that the relevant classes for consideration are Class 10(b)(i) “construction of more than 500 dwelling units” and Class 10(b)(iv) “urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere”. Having regard to the modest size of the site at 515 sqm and the number of units to be provided at nine which is considerably below the 500 dwelling threshold, it is considered that, having regard to the nature and scale of the proposed development, the location of the development on an infill serviced site, the separation distance from the nearest sensitive location, together with the characteristics and likely duration of potential impacts, that the proposal is not likely to have significant effects on the environment and that the submission of an environmental impact assessment report is not required. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Third-Party Appeal

- 6.1.1. A Third-Party Appeal was submitted to An Bord Pleanála on 24th November 2021 on behalf of Seamus Fitzpatrick, the secretary of the Lin Court Management Company (which manages the houses Nos 19-23 Ballsbridge Avenue), opposing the Local Authority’s decision. The grounds of appeal can be summarised as follows:

- Invalid application - inadequate public notices (no reference to the fourth floor, and the description suggests there is frontage to Merrion Road, which is misleading as the site comprises a rear backland area), no foundation plans submitted, inadequate ground levels, dimensions and neighbouring buildings/features shown on plans,
- Overlooking and loss of privacy to neighbouring residents.
- Overdevelopment, excessive scale massing and height – the site area includes the Ground Floor of No. 18 and the office in No. 1 Ballsbridge Avenue and

therefore the actual site area is less than 515 sq m and results in a more intensive and problematic development.

- Daylight and sunlight assessment does not take account of the changes in ground floor level in the area. The analysis shows the proposal would be excessive and fails to comply with the BRE standards.
- Noise disturbance impacts on neighbouring residents
- The omission of Unit 3 will still result in the courtyard associated with No. 23 becoming a dark cavernous hole rather than the light filled delight that clients currently enjoy. The setback (from the omission of the subject unit) will not address the visual overbearing nature of the proposal.
- The proposal would set a significant and adverse precedent for the entire area of single storey housing in the vicinity, thereby impacting the neighbouring conservation area.
- There is no coherent development site. The sequestration of rear yards eliminates necessary service areas for the existing restaurant.
- A delivery van associated with the restaurant blocks to the proposed apartments and represents a traffic hazard.
- There is no vehicular or service access to the proposed apartments.
- No evidence to suggest surrounding road and parking network is capable of accommodating the proposed development.
- The proposed refuse area represents an obstruction to pedestrians, is incongruous in the streetscape, and would not be easily accessed by future residents.
- Absence of any coherent urban design philosophy, which undermines the local streetscape and urban morphology of the area. Not clear how the communal open space would work and how the bike parking would integrate into the space.
- No access for fire emergency vehicles.
- The site is located in Flood Zone A. There are no measures to mitigate residual risk to the area. The mobile flood barrier is an isolated measure devoid of any

emergency flood planning or details for access and egress during flood events. There is a risk of pluvial flooding. The Justification Test has relied excessively on mitigation rather than assessment of the risk and the analysis is flawed.

- The Local Authority's assessment and decision failed to adequately address the impacts from the proposed development.
- The proposal would materially contravene the site's land use zoning.
- There is a failure of urban design and the proposed development is a fragmented ad hoc overly dense scheme of development on a restricted backland site which materially and significantly impacts on the surrounding area of single storey housing characterizing the local neighbourhood.

6.1.2. First-Party Response to Third-Party Appeal

The Applicant submitted a First-Party Response to the Third-Party Appeal. The Response includes a rebuttal from Cora Consulting Engineers in relation to flood risk and how the scheme meets the objectives of the Development Management Justification Test. The key points raised in the Response can be summarised as follows:

- The planning application was validated by the Local Authority and the public were clearly informed of the proposal.
- The appropriate height for infill development of this nature was carefully considered by the design team, specifically with regard to the proximity to established dwellings and amenity spaces bounding the site. Whilst the design proposal ensures no overlooking into rear gardens, it was equally important to ensure no material loss of amenity from overshadowing or loss of daylight.
- The shadow impact on the test month March in this case is disproportionately high. As the year passes and the sun's path rises higher, impact is greatly reduced as the surrounding buildings impact less. A full month-by-month analysis was undertaken. The change ratio for months other than March/September well exceed the standard 0.80 ratio limit, and are typically better than 0.9.

- The precedent case (Reg. Ref. 2195/21) referenced by the Third-Party Appellant is not applicable as that case was located within the River Dodder Conservation Area. The subject site is not located within an ACA.
- The proposal represents a sustainable, high-quality infill development in the heart of a Neighbourhood Centre, well connected to public transport and amenities and is consistent with the NPF and Regional Strategy.
- As a small infill scheme, the development does not provide any car parking on site, which is considered to be consistent with the Apartment Guidelines. The Applicant highlights the various modes of public transport in the area and notes that there are GoCar locations at Herbert Park and on Serpentine Avenue should residents require a car.
- The comments regarding waste storage are without foundation. The existing restaurant has its own rear access and bin storage are as per Reg. Ref. 3667/10.
- The scheme will require a Fire Safety Certificate and has been designed in compliance with all relevant Building Regulations. Access for fire emergency vehicles is not required.
- The proposal will not increase the risk of flooding and appropriate flood defences have been included. The Local Authority's Drainage Department were satisfied with the proposal. The Response includes correspondence from Cora Consulting Engineers which outlines how the scheme is compliant with the objectives of the Development Management Justification Test.

6.2. First-Party Appeal

- 6.2.1. A First-Party Appeal was submitted to An Bord Pleanála on 19th November 2021 by the Applicant in relation to Condition No. 4 attached to the Notification of Decision to Grant Permission. As outlined in Section 3.1 above, Condition No. 4 requires the omission of the roof terrace and access to same that was proposed at RFI stage, and the omission of Unit 3 and its replacement with bicycle parking and additional communal open space. The grounds of appeal in respect of this Condition can be summarised as follows:

- The roof terrace is an integral element of the proposal, which adds value in terms of residential amenity by providing a useable communal open space for all residents. It provides a pleasant space with good climatic conditions and sunlight penetration.
- Comments regarding the terrace being overbearing are without foundation. The terrace is a discrete feature which does not detract from the overall elevation as viewed from Ballsbridge Avenue. The terrace is setback from neighbouring properties and will feature boundary screening to afford privacy and prevent undue overlooking.
- The roof terrace accords with and exceeds the requirements of the Apartment Guidelines (2020) and the (former) Development Plan. The space will provide much greater functionality for all age groups, in comparison to the original courtyard.
- The roof terrace would not be out of character with the area as there is evidence of several roof terraces serving residential development in the immediate area. Reference is made to 45-49 Shelbourne Road, Shelbourne Court, and Herbert Park SHD.
- Request that should the Board not concur with the provision of the roof terrace that the conversion of the office Unit at No. 1 Ballsbridge Avenue to amenity/bike storage, rather than Unit 3. This Unit would be more beneficial to residents as they could access the bike storage directly from the street, rather than going past several other ground floor units to reach Unit 3.

6.2.2. **Third-Party Response to First-Party Appeal**

The Third-Party Appellant submitted a response to the First-Party Appeal to the Board on 8th December 2021. The key points raised in the Response can be summarised as follows:

- The Board has no jurisdiction to grant permission for the plans of the roof terrace, which were neither requested by the planning authority nor described in the public notices.

- The plans submitted at RFI exceed the scope of the RFI. The plans are materially different to the plans originally lodged with the application. The submission of the revised plans invalidated the application as the planning notices are no longer fit for purpose. Likewise, the suggestion to replace the office accommodation in No. 1 Ballsbridge Avenue with bicycle storage follows the same pattern of illegality exceeding the scope of the application.
- The precedent cases for a roof terrace referenced by the Applicant are not applicable.
- The proposal would result in a fragmented and incoherent ad hoc approach to development of backland areas resulting in excessive scale, massing and height failing to accord with the design principles. It would be visually incongruous and overbearing.
- No set down facilities for deliveries or refuse collection are provided, nor is there resident or visitor car parking proposed, which will result in serious congestion and overspill car parking in the area.
- There is no justification for the proposal if a highly vulnerable residential development on a site subject to high risk of flooding.

6.3. Planning Authority Response

Dublin City Council has not submitted a response to the First-Party or Third-Party appeals.

6.4. Observations

- 6.4.1. Four Observations were submitted to the Board opposing the Local Authority's decision. The key points from the Observations are summarised below.

An Taisce (The Tailor's Hall, Back Lane)

- In view of its scale, mass and proximity, it is considered that the proposed development would detrimentally impact on the amenities and setting of the adjacent single-storey artisan cottages at Ballsbridge Avenue, which are part of the heritage and character of Ballsbridge Village and provide local housing.

- It is recommended that the proposal is modified to lessen the possible or likely adverse impact on the historic setting of these properties and ensure protection of their residential amenity and that their resale value is not adversely affected or reduced.

Joan and Peter Brady (Ballsbridge Avenue)

- Overbearing in size, massing and height
- Loss of privacy and daylight
- The new development appears to be much higher than the ground level of No. 3, which will magnify the impacts from the development on neighbouring properties.
- Devaluation of property prices.
- Concern regarding noise, disruption and intrusion impacts, including traffic impacts, during the construction phase.
- Serious health and safety risk due to no vehicular access being proposed.
- Proposal will lead to illegal and dangerous parking.
- Object to the request to omit Unit 3 and construction of a roof terrace.
- Statutory notices made no reference to roof terrace, which would increase overlooking and intrusion.

Philip O'Reilly (Grosvenor Place, Rathmines)

- The proposal will overwhelm and destroy the setting and character of the important historical single storey artisan cottages on Ballsbridge Avenue and reduce the residential amenity of the houses on this Street.
- The proposal is contrary to the site's land use zoning.
- The roof terrace indicates the significant dearth of open amenity space.
- Open elevated recreational terraces are totally repugnant to any principles of proper planning and development.
- Significant overlooking will result, reducing residential amenity.
- Concerns regarding noise and overshadowing.

Les and Mary McClure (Dodder View Cottages, Ballsbridge)

- The roof terrace proposed at RFI stage was not included in the original statutory notices. If granted, it would have a very significant impact on surrounding properties.
- The precedent cases for a roof terrace referenced by the Applicant are not applicable. However, the precedent case referenced by the Third-Party Appellant at No. 7 Granite Place (Reg. Ref. 3497/20, 2195/21) is relevant to the subject case.
- Concerns regarding limited sightlines at the junction of Ballsbridge Avenue and Merrion Road, and the lack of resident or visitor car parking or set-down facility area.

7.0 **Assessment**

Having examined the application details and all other documentation on file, including the submissions received in relation to the planning application, the Third-Party Appeal, First-Party Appeal, Observations and Further Responses, and inspection of the site, and having regard to relevant local/regional/policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of Development
- Design Suitability
- Standard of Residential Development Proposed
- Impact on Residential Amenity
- Traffic and Car Parking
- Flooding
- Procedural and Other Matters

Each of these items is addressed in turn below. My assessment considers the planning application as lodged with the Planning Authority and amended by way of a request for further information, de novo. As such, I do not consider it necessary to

address concerns raised by the Third-Party Appellant with respect to the robustness of the Local Authority's assessment.

7.1. Principle of Development

- 7.1.1. The site has a split zoning, with the frontage along Merrion Road being zoned Z4 "Key Urban Villages/Urban Villages" with the aim "*To provide for and improve mixed-services facilities*", while the area to the rear and Nos. 1 and 2 Ballsbridge Avenue being zoned Z1 "Sustainable Residential Neighbourhoods" which has the aim "*To protect, provide and improve residential amenities*". Residential is listed as a 'permissible use' under both land use zoning objectives while Office is listed as a 'permissible use' under Z4, it is 'open for consideration' under Z1. I consider the proposed development to be acceptable in principle, subject to quantitative and qualitative safeguards in respect of design and amenity.
- 7.1.2. The Third-Party Appellant refers to the proposal as 'backland' development, while the Applicant references it as 'infill'. Having reviewed the relevant sections in the Development Plan (Section 15.5.2 Infill Development and Section 15.13.4 Backland Housing), I do not consider that there is a material difference in the assessment criteria for the purposes of this case, as both types of development are required to have regard to the character and setting of an area and whilst also ensuring that an appropriate standard of accommodation and amenity is provided to both existing and future residents. I note that Section 5.9 of the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* refers to infill residential development and includes: "*Potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. These also provide: In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill*". While I acknowledge the Third-Party Appellant's comments regarding the site's incoherent nature, in my opinion, the site is typical of many infill urban sites. I do not consider that this excludes it from redevelopment, subject to appropriate regard being had to the neighbouring properties.

7.1.3. In summary, while the principle of an infill/backland can be supported within the residential land use zoning, it needs to be ascertained whether the proposed development on the subject site would be sustainable on this site and would not be detrimental to the amenities of adjoining residential properties or the character of the area. Regard is had to these issues in the Assessment below.

7.2. Design Suitability

7.2.1. The Third-Party Appellant and Observers contend that the proposal represents an overdevelopment of the site due to its height, scale and massing and as a result, will be visually incongruous and will negatively impact the character and setting of the area.

Height

7.2.2. The proposed development includes for a part 1/2/3 storey extension to the rear of No. 18 and Nos. 14 and 16 Merrion Road, with a lift overrun and circulation stairs provided at rooftop level providing access to the communal open space. As outlined above, the Development Plan states that areas outside of the canal ring, in the suburban areas of the city, heights of 3 to 4 storeys will be promoted as the minimum. As such, the proposal is compliant with the Development Plan's height strategy. Whilst the site abuts single storey dwellings, having regard to its location in the village centre and the availability of public transport in the area, I consider the proposed height to be acceptable.

Bulk and Scale

7.2.3. In terms of bulk and scale, the new building element of the proposal will be located to the rear of Nos. 14-18 Merrion Road. As is evident on Dwg. No. PL06A, the proposal will not appear dominant as it is appropriately setback from the streetscape, notwithstanding, that the tallest element (i.e. the lift overrun) will be visible. The majority of the northwest elevation (when viewed from Beatty's Avenue) of the proposal will not be visible due to the built-up nature of the commercial and retail units fronting Merrion Road. Therefore, I am satisfied that it will not negatively impact the Dodder Conservation Area. I note that the screen surrounding the roof terrace exceeds the eaves on the rear elevation of No. 18 Merrion Road when viewed from Ballsbridge Park. Whilst I do not consider this to be problematic, as the building is not a Protected Structure nor is it located in a conservation area, in my opinion, should the screen be

constructed with glazing as opposed to the proposed pressed metal finish, it would have a lighter appearance and reduce the scale and massing of the new building element (see View 4 Proposed of the photomontages submitted with the RFI Response). This matter could be addressed by way of condition attached to the Order should the Board grant permission for the proposal.

- 7.2.4. In terms of the south-eastern elevation, the proposal's bulk and scale will appear significant in comparison to its current condition. It is important to note however, that the circulation core and lift overrun providing access to the communal roof terrace is setback from the parapet height and as such, would not appear as domineering as presented on the Proposed Contiguous Front Elevation – Ballsbridge Avenue on Dwg. No. PL06A. View 5 Proposed gives a more accurate indication of how the scheme would appear from Ballsbridge Park/Avenue. Whilst the three storey element in contrast to the single storey units on Ballsbridge Avenue would be viewed as a significant departure from the current streetscape, in my opinion, the scale and bulk is acceptable having regard to the site's location in the centre of Ballsbridge when viewed from the surrounding area. However, having regard to the residential nature of Nos. 2 and 3 Ballsbridge Avenue and the separation distance between the rear elevations of these units to the new building and the difference in ground floor levels between these units, I have concerns that the bulk and massing may appear overbearing and reduce their residential amenity. However, subject to the omission of Unit 3 as proposed in Condition No. 4 (b) of the Local Authority's Notification of Decision to Grant Permission, the scale and bulk would be significantly reduced for No. 3 Ballsbridge Avenue, which is not included in the application and currently occupied by Observers Joan and Peter Brady. This alteration would not have the same benefit to No. 2, a proposed one-bed unit. That being said, I do not consider that this issue alone would result in the Unit providing future residents with an inadequate level of resident amenity. Furthermore, I highlight that Unit 2 looks out onto the proposed courtyard and as such would not be as confined as No. 3 Ballsbridge Avenue. Having regard to the foregoing, subject to the attachment of a condition requiring the removal of Unit 3, I am satisfied that the bulk and scale is acceptable for the site.

Density

- 7.3. In quantitative terms, the proposed development would have a residential density of 174 units per hectare. As outlined in Section 5.2.5 above, the Development Plan

outlines a density range of 60-120 units per hectare for the Outer Suburb areas and that there will be a general presumption against schemes in excess of 300 units per hectare. The Development Plan states that “*All proposals with significant increased height and density over the existing prevailing context must demonstrate full compliance with the performance criteria set out in Table 3*”. I outline below how the scheme is consistent with the criteria in the proceeding sections. However, this Section should also be read in conjunction with Sections further below.

Objective 1: To promote development with a sense of place and character.

- 7.3.1. The proposal is located in the heart of Ballsbridge village. The area has witnessed a number of large-scale redevelopments including that of No. 20 Merrion Road, which is currently under construction. Whilst the site is not located in a conservation area, it directly abuts the Dodder River Conservation Area to the rear. The site does not abut any Protected Structures. At present, the site is underutilised (with the exception of the Ground Floor restaurant at No. 18 Merrion Road, which is not included in the application), and does not contribute to the vitality or vibrancy of the area. The proposal will provide for nine residential units, in close proximity to a range of community services and facilities and employment centres. Furthermore, the site is within walking distance of a number of public transport modes. At present, the piecemeal extensions and outbuildings creates visual clutter and fails to positively contribute to the area’s visual amenity. On the contrary, the proposal will regenerate the site, creating a sense of place with an architectural design that respects and complements the area, while also providing residential accommodation of an appropriate standard for future residents.

Objective 2: To provide appropriate legibility

- 7.3.2. As stated above, the site, in particular the south-eastern elevation, which is clearly visible from Merrion Road, Ballsbridge Park and Ballsbridge Avenue, does not positively contribute to the area’s visual amenity. While the front elevation of No. 18 Merrion Road provides an attractive street frontage, the south-eastern elevation consists of a myriad of extensions/structures (see Photo 11 attached to this Report). The architectural design would provide strong legibility, that facilitates navigation/wayfinding in the area. The use of materials and overall scale and form of

the building will create a sense of place. Each of the units will be accessed via the existing pedestrian access off Ballsbridge Avenue.

Objective 3: To provide appropriate continuity and enclosure of streets and spaces

- 7.3.3. The proposal includes for a two/three-storey extension to the rear of No. 18 Merrion Road and is of an appropriate height and scale to address the public realm area on the corner of Merrion Road and Ballsbridge Park. It will provide continuity and enclosure of the site. The provision of a series of new and enlarged windows on the existing southern elevation of No. 18 will further increase the passive surveillance on this corner also.

Objective 4: To provide well connected, high quality and active public and communal spaces

- 7.3.4. The proposed development does not include for the provision of any public open space, but does include a ground level courtyard and a 100 sq m roof terrace. However as outlined above, Condition No. 4(a) attached to the Local Authority's Notification of Decision to Grant Permission requires the omission of this terrace in the interests of orderly development, residential and visual amenity. I concur with the Local Authority that the ground level courtyard as currently proposed would serve primarily as a circulation space and as such, would be of limited amenity to residents. However as discussed in further detail below, I consider that the provision of the roof terrace would significantly contribute to the amenity of future residents of the scheme, without adversely impacting on the neighbouring properties' amenity.

Objective 5: To provide high quality, attractive and useable private spaces

- 7.3.5. Each of the proposed units has direct access to terrace/balcony areas as private amenity space, which are in accordance with the Apartments Guidelines' minimum requirements, except Units 7 and 9. These two Units are located within No. 18 Merrion Road. The Applicant states that they are provided with "*additional room area to the kitchen/living/dining space of 5 sq m, which equates to the minimum private amenity for a one bed. In addition, they are provided with generous Juliette balconies, which allow the kitchen/living/dining strong connection to the outside*". Having regard to the size of these units (i.e. one bed units) and the number of them (i.e. two) and

acknowledging that future residents would have access to the communal roof terrace, I consider them to be acceptable.

- 7.3.6. Furthermore, the lift and staircore would service the communal roof terrace and as such, it would be accessible to all residents. Having regard to its orientation and surrounding built environment it would avail of good daylight and sunlight and provide residents with rooftop views of the surrounding area and as such would be a positive amenity for future residents. Having regard to the design and orientation of the neighbouring dwellings, I do not consider that significant overlooking would occur that would adversely impact on residential amenity.

Objective 6: To promote mix of use and diversity of activities

- 7.3.7. The proposed development includes for nine apartments and an office in the heart of Ballsbridge village and will positively contribute to the area's vibrancy. The proposal includes for a mix of unit types: 2 No. studios, 5 No. 1-bed, and 2 No. 2-bed and as such will contribute to the area's typology, which traditionally comprised larger dwellings, albeit more apartments have been provided for in recent years. While the office space is relatively small (18.3 sq m), it will also add to the mix of uses in the immediate area without adversely impacting on the area's residential amenity.

Objective 7: To ensure high quality and environmentally sustainable buildings

- 7.3.8. In terms of dual aspect, 44% (i.e. 4 units) are dual aspect, which exceeds the Apartment Guidelines' requirement for a 33% compliance rate. The Applicant prepared a daylight analysis of the scheme which advises that there will not be a significant loss of daylight or overshadowing on neighbouring properties that would unduly impact their residential amenity. The Preliminary BER Report (dated 25th March 2021), which was submitted in respect of the original proposal, outlines that a BER rating of A3 is anticipated. I note that no such report was submitted in respect of the revised scheme submitted at RFI stage, however the amendments are relatively minor in nature and are unlikely to significantly impact the anticipated rating. A Site-Specific Flood Risk Assessment Report (dated March 2021) was submitted with the application that outlines that subject to the implementation of various mitigation measures, including raised floor levels of the new building and the provision of flood gate/barriers, the proposed development does not represent a flood risk hazard.

Objective 8: To secure sustainable density, intensity at locations of high accessibility

7.3.9. The site is well served by public transport with a number of Dublin Bus routes running along Merrion Road. Lansdowne Road DART and Sandymount DART stations are within a 10 minute walk of the site. The proposal does not include for car parking, however having regard to the site's proximity to public transport and the number and type of units proposed, I consider that the development will not cause traffic congestion in the area.

Objective 9: To protect historic environments from insensitive development

7.3.10. While many of the local residents and An Taisce contend that the proposal will adversely impact the character and setting of the area, I highlight that the site is not located in an architectural conservation area, conservation area nor does it contain any Protected Structures. Furthermore, the proposal does not impact on any protected views identified in the Development Plan. While the scheme is denser in comparison to the older, single storey dwellings along Ballsbridge Avenue, planning policy at national, regional and local level clearly supports compact high-density developments in urban areas that is in close proximity to public transport. In my opinion, the reference to the refused permission associated with the two-storey extension to No. 7 Granite Terrace, is not relevant to this application, having regard to that site's location along a terrace of single storey dwellings in the River Dodder Conservation Area. While the proposal will have a visual impact on the immediate area, it is not a reasonable expectation in my view that there would be no material visual change on parts of the streetscape in the redevelopment of the site, having regard to national guidelines and the site's proximity to the city centre, employment hubs and public transport.

Objective 10: To ensure appropriate management and maintenance

7.3.11. Should the Board grant permission for the proposal, I recommend that a condition be attached to the Order requiring that the proposal be managed by a legally constituted management company. The attachment of such a condition is standard practice in residential developments comprising apartment units. Furthermore, I note that the Local Authority's Drainage Department was satisfied with the measures proposed in the Site Specific Flood Risk Assessment, including implementation of an advanced warning systems. I am satisfied with the proposed measures, and do not consider that

the proposal represents a flood risk hazard. In addition, I recommend that the Applicant be required to submit details to the Local Authority outlining how the trees and public realm area on the corner of Merrion Road and Ballsbridge Park would be protected during the construction period.

Conclusion

7.3.12. Having regard to the above, I am satisfied that the density of the proposed development accords with the performance criteria set out in Table 3, Appendix 3 of the Development Plan and would be consistent with Policies QHSN6 and QHSN10 of the Plan.

Plot Ratio and Site Coverage

7.3.13. While the Applicant has not stated the plot ratio and site coverage figures for the revised RFI scheme, having regard to the figures quoted for the original scheme, it is reasonable to assume that they exceed the Development Plan's standards for the area, which are 1.0-2.5 and 45-60%, respectively. However the Development Plan states that 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.

7.3.14. Having regard to the above exemptions, in particular the site proximity to public transport, I consider that there is reasonable grounds for the indicative standards to be exceeded.

Materials

7.3.15. The proposed new building element will be primarily finished with brick, glass balustrades, and powder coated aluminium fin railings. A pressed metal finish emphasises the horizontal appearance of the building and in my opinion, reduces the height and scale of the proposal on Nos. 1-3 Ballsbridge Avenue. I concur with the

Applicant that the proposed brick is sympathetic to the character of Ballsbridge and complimentary to Nos. 16-18 Merrion Road, whilst also reading as a distinct extension. Accordingly, in my view, the proposal will visually integrate successfully into the streetscape and wider area.

Conclusion

7.4. In conclusion, I am satisfied that the proposed development's height, bulk, scale and massing are appropriate for this location having regard to the site's position in the centre of Ballsbridge and the pattern of development in the wider area. The proposed materials will help visually integrate the proposal into the streetscape. In my view, it will not adversely impact the visual amenity or character of the area. Whilst the proposed density exceeds the density range of 60-120 units per hectare, I consider it appropriate for the urban location, which is in close proximity to public transport and is consistent with national policy for compact development at such locations. Having regard to the foregoing, I consider that the proposed architectural design is acceptable.

7.5. **Standard of residential development proposed**

Mix of Units

7.5.1. SPPR 2 of the Apartment Guidelines outlines that for building schemes on urban infill sites of up to 0.25 ha where up to 9 units are proposed, there shall be no restriction on dwelling mix, provided no more than 50% of units comprise studio-type units. The proposed development includes for two studios and as such is compliant with the Guidelines in this respect.

Floor Areas and Dimensions

7.5.2. I have reviewed the gross floor areas for each unit, and I am satisfied that they meet the minimum areas as per the Apartment Guidelines. Section 3.8 (a) of the Guidelines sets out that the majority of apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1-, 2- or 3-bedroom unit types, by a minimum of 10%. This clearly does not apply to the current proposal for nine units.

7.5.3. I have also examined the internal room areas and widths and consider that they comply with the minimum requirements for living/kitchen/dining spaces, and bedrooms, as set out in Appendix 1 of the Guidelines. In relation to storage space, the

Guidelines state hot presses or boiler space will not count as general storage, however from review of the drawings submitted at RFI, such space would appear to have been included in the storage calculations and in this regard, there appears to be a marginal shortfall in storage space for some of the Units (Nos. 2, 5, 6 and 7). Notwithstanding this, Section 3.34 states *For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, the storage requirement may be relaxed in part, on a case-by-case basis, subject to overall design quality.* As such, I consider the storage facilities to be acceptable. The proposed ceiling heights are a minimum 2.7m, and as such comply with the minimum requirements of the Apartment Guidelines.

Aspect

- 7.5.4. The Apartment Guidelines (SPPR 4) require that a minimum of 33% dual aspect units be provided in central and accessible urban locations, albeit that this may be relaxed on building refurbishment/urban infill sites up to 0.25ha. 44% of the apartments will be dual aspect and as such, the proposal is consistent with the Guidelines in this regard.

Amenity Space – Private Open Space

- 7.5.5. With the exception of Unit 7 and 9, all of the units have private open space that is compliant in quantitative terms with the Apartment Guidelines requirements. Section 15.9.7 of the Development Plan states: *“At ground floor level, private amenity space should be sufficiently screened to provide for privacy. Where ground floor apartments are to be located adjoining the back of a public footpath or other public area, consideration may be given to the provision of a ‘privacy strip’ of approximately 1.5 m in depth, subject to appropriate landscape design and boundary treatment”.* There are four ground level units proposed, including Unit 3. Landscaping is shown around these spaces, however the details of same are not specified. Should the Board grant permission for the proposal, including the omission of Unit 3, it would allow for a reconfiguration of the courtyard, which could facilitate the landscaping/screening details for the ground level private open space to be agreed with the Local Authority prior to the commencement of the development. Whilst Units 7 and 9 do not have private open space, I highlight that they are located within No. 18 Merrion Road. The Applicant states that they are provided with *“additional room area to the kitchen/living/dining space of 5 sq m, which equates to the minimum private amenity*

for a one bed. In addition, they are provided with generous Juliette balconies, which allow the kitchen/living/dining strong connection to the outside". These Units would also have access to the communal roof terrace. Having regard to the size of these units (i.e. one bed units) and the number of them (i.e. two) and acknowledging that future residents would have access to the communal roof terrace, I consider them to be acceptable.

Amenity Space – Communal Space

- 7.5.6. Following concerns raised by the Local Authority in relation to the communal open space within the courtyard of the original scheme, the Applicant proposed a roof terrace measuring 100 sq m at RFI stage. However as outlined above, Condition No. 4(a) attached to the Local Authority's Notification of Decision to Grant Permission requires the omission of this terrace in the interests of orderly development, residential and visual amenity. I concur with the Local Authority that the ground level courtyard as currently proposed would serve primarily as a circulation space and as such, would be of limited amenity to residents. I consider that the provision of the roof terrace would significantly contribute to the amenity of future residents of the scheme, without adversely impacting on the neighbouring properties' amenity. The area would provide pleasant rooftop views and due to its configuration and the surrounding built-up environment would not experience negative micro-climate impacts. In accordance with Section 15.9.9 of the Development Plan it would be accessible to all users, safe, landscaped, and would avail of a high level of daylight and sunlight. As outlined above, I recommend that the safety screen is constructed with opaque glazing to lessen its visual impact. Having regard to the separation distance between the rooftop terrace and Nos. 3 and 19-23 Ballsbridge Avenue, the orientation of the communal space in relation to these units and the built-up nature of this area, I am satisfied that no adverse overlooking will arise in respect of these units from this space. The terrace may result in overlooking of the private open terrace associated with Unit 3 and 4. However, as mentioned previously, I recommend that Unit 3 is omitted from the scheme to avoid overbearing and overlooking impacts from the Unit on No. 3 Ballsbridge Avenue. Whilst I highlight that there are no roof windows proposed to Unit 4 (No. 2 Ballsbridge Avenue) and landscaping is proposed around the terrace associated with this unit, it will be overlooked to some degree from the rooftop. Notwithstanding this, I am satisfied that the Unit would provide future residents with a sufficient level of amenity.

It is important to note that the terrace would not result in overlooking of the bedroom or living space associated with this Unit. In summary, in my opinion, the roof terrace would increase the amenity value provided to future residents and would not adversely impact the residential amenity of neighbouring properties. Concerns in relation to noise from the balcony are addressed below.

Communal Facilities

- 7.5.7. A bin storage area is proposed at ground floor level facing onto the public realm space on the corner of Merrion Road and Ballsbridge Park. Concerns have been raised in relation to the adequacy of this provision in light of the ground floor restaurant in No. 18 Merrion Road and the impact it will have on the streetscape. The Applicant states that the existing restaurant has its own rear access and bin storage are as per Reg. Ref. 3667/10. The proposed waste area would have adequate capacity to cater for the 3-bin system. However, in my opinion, subject to Unit 3 being omitted from the proposal, I recommend that the waste storage area be relocated to this space. In my view, it would provide easier access for occupants of the units. Furthermore, it would reduce the impact for potential unpleasant odours on the public realm space at the corner of Merrion Road and Ballsbridge Park for prolonged periods and the visual amenity of the streetscape. However, the area could be used for limited periods as a staging area to facilitate waste collection. Should the Board grant permission for the proposal, this matter could be addressed by way of condition.
- 7.5.8. The Apartment Guidelines state that cycle storage facilities shall be provided in a dedicated facility of permanent construction, preferably within the building footprint or, where not feasible, within an adjacent or adjoining purpose-built structure of permanent construction. The scheme includes for 19 No. bicycle spaces within the courtyard area. As per Condition No. 4(b) attached to the Notification of Decision to Grant, should Unit 3 be omitted, I recommend that this space is used for bicycle storage and refuse storage. The space would be accessible to all occupants. The Applicant in the First-Party Appeal requests that should the Board not concur with the provision of the roof terrace, that the conversion of the office unit at No. 1 Ballsbridge Avenue to amenity/bike storage, rather than Unit 3. The Applicant argues that this Unit would be more beneficial to residents as they could access the bike storage directly from the street, rather than going past several other ground floor units to reach Unit 3.

I do not consider that this suggestion addresses the overbearing nature that Unit 3 would have on No. 3 Ballsbridge Avenue, as discussed in further detail below.

- 7.5.9. The communal access and stair cores are also acceptable in terms of convenience and security in accordance with the provisions of the Apartments Guidelines. Given the limited scale of the development I am satisfied that no other communal facilities are required.

Security

- 7.5.10. The Third-Party Appellant notes that the scheme is gated. Section 15.8.10 (Gated Communities) in the Development Plan states that there is a general presumption against such schemes in order to promote permeability and accessibility in the urban area. However, it is important to note that there is no throughway on the site and as such, it would have no impact on permeability and accessibility. It would operate in the same manner as Nos. 19-23 Ballsbridge Avenue. As such, I consider that the scheme is acceptable in this regard.

Conclusion on Residential Standards

- 7.5.11. Having regard to the above, I am satisfied that the proposed development provides a suitable mix of units with appropriately designed and sized internal and external spaces. And while I have identified some limitations in respect of storage, I am satisfied that the proposals can be accepted in accordance with the Apartments Guidelines provisions for small sites of less than 0.25ha. Accordingly, I am satisfied that it would provide a suitable standard of residential amenity for the prospective occupants. The issue of daylight/sunlight within the proposed development is addressed further in Section 7.7 of this report.

7.6. Impact on Residential Amenity

Overbearing

- 7.6.1. The Third-Party Appellant and Observers raise concerns about the scale and bulk of the proposed development and the intrusive visual impacts that it would have on the neighbouring properties. In my opinion, having regard to the separation distance between the rear elevation of Unit 3 and the rear of No. 3 Ballsbridge Avenue (3m), it would have a significantly negative overbearing impact on the existing residential amenity currently enjoyed by the residents of this dwelling. The two/three storey

element storey along the private open space associated with Unit 5 and 8 is located approximately 2.2m from the rear elevation of No. 3 Ballsbridge Avenue. In addition, there is approx. one metre level difference between the courtyard and new building element of the proposal and Nos. 1-3 Ballsbridge Avenue (see Proposed Section CC on Dwg. No. PL07A). No. 3 is a small dwelling on a confined site, with very limited open space. While I note that the proposed Unit 3 is stepped at first floor level, it will have a parapet height of 6.52m, and as such would overbear this neighbouring property at a lower ground floor level. Therefore, I concur with the Local Authority and recommend that this Unit is omitted from the proposal.

- 7.6.2. I note that Units 1, 2, 5 and 8 would be located at a similar distance from the rear elevation of Unit 4 (No. 2 Ballsbridge Avenue). The proposal includes extending No. 2 to the rear. Whilst the three storey element would have overbearing impacts on Unit 4 and its private amenity space, it is important to note that this Unit is vacant and does not currently benefit from an established residential amenity. Furthermore, having regard to the size and nature of the Unit (i.e. a one-bed unit, which forms part of a terrace) and (unlike No. 3 Ballsbridge Avenue), it overlooks the courtyard, I consider that the overbearing impacts would not unduly impact the amenity of this Unit and as such in my opinion, the proposal is acceptable in this regard. Having regard to the stepped nature of the new building element, and should the Board omit Unit 3, in my opinion, the proposal would be sufficiently setback from Nos.19-23 to ensure no undue overbearing impacts would arise on these residents.

Overlooking and Privacy

- 7.6.3. Similar to the above, in my opinion, having regard to the proximity of proposed Unit 3 to No. 3 Ballsbridge Avenue, in particular the skylight windows (see photo 13 attached to this Report) and private open space associated with the latter, it would result in significant overlooking and a loss of privacy, thereby reducing the residential amenity of this dwelling. As such, I recommend that Unit 3 is omitted from the proposed scheme. There are no windows facing Nos. 19-23 and as such, there would be no loss of privacy. The rear window of Unit 4 directly faces onto the courtyard and the private open space associated with Unit 2. It is important to note that there is a significant difference in level between the courtyard and new building element of the proposal and Nos. 1-3 Ballsbridge Avenue. However, I note that landscaping is proposed along this window and the private open space associated with Unit 4. Similar, landscaping

is proposed to the front of Unit 1 and 2 and the open space associated with Unit 3. I recommend that the details of this landscaping/screening be agreed with the Local Authority, prior to the commencement of the development, should the Board grant permission for the proposal. As discussed above, minor overlooking from the roof terrace is possible on the private amenity space associated with Unit 4. However, again I highlight that this is a small, vacant, one-bed unit, which does not currently have a high level of residential amenity. Having regard to national policy for compact urban growth, on balance, I consider the scheme acceptable, subject to condition.

Noise

- 7.6.4. Concerns were raised in relation to noise impacts from the proposal, particularly from the roof terrace. Having regard to the size and nature of the communal roof terrace (i.e. to serve nine small apartment units), I do not consider that it is likely that significant noise levels from its use would occur. It is important to note that the site is located in the centre of Ballsbridge and as such background noise levels are notable at present from various activities and modes of transport in the area. The proposal does not include any features that would be of concern regarding security or anti-social behaviour. I am satisfied that the proposal will not generate noise levels that would adversely impact the residential amenity of the area.

Construction Impacts

- 7.6.5. 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.

Property Values

- 7.6.6. I note the concerns raised in this case in respect of the devaluation of neighbouring property as a result of the proposed development. However, having regard to the assessment outlined above, I am satisfied that the proposed development would not seriously injure the amenities of properties to such an extent that it would have any adverse effect on the value of property in the vicinity of the site.

Conclusion on Adjoining Properties

7.6.7. Having regard to the above, I am satisfied that, subject to conditions, the proposed development can be satisfactorily accommodated at this location and would not seriously detract from the amenities of surrounding properties. While the proposed development would involve an intensification of activity and development at both construction and operational stages, I consider that the impacts would be acceptable having regard to the site's zoning objectives, location within Ballsbridge, its proximity to public transport and the need to facilitate the compact urban development in accordance with local and national planning policies.

7.7. Daylight/Sunlight

7.7.1. Although the proposal does not rely on SPPR 3 of the Urban Development and Building Height Guidelines (2018), I note that Section 3.2 of the Guidelines states that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views, and minimise overshadowing and loss of light. The Guidelines state that 'appropriate and reasonable regard' should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and / or an effective urban design and streetscape solution.

7.7.2. The Apartments Guidelines also highlight the importance of provision of acceptable levels of natural light in new apartment developments, which should be weighed up in the context of the overall quality of the design and layout of the scheme and the need to ensure an appropriate scale of urban residential development. It states that planning authorities 'should have regard' to these BRE or BS standards when quantitative performance approaches are undertaken by development proposers which offer the

capability to satisfy minimum standards of daylight provision. Again, where an applicant cannot fully meet these daylight provisions, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting.

- 7.7.3. Appendix 16 (Sunlight and Daylight) of the Development Plan highlights that neither the Building Height Guidelines 2018 or the Apartment Guidelines 2020 refers to BS EN 17037 or IS EN 17037, which relates to the British and Irish adaption, respectively, of the European wide standard for daylight (EN 17037). Section 3.6 of Appendix 16 states that *The planning authority understand that, at present, there is some ambiguity in what may be considered the appropriate standard to apply for daylight and sunlight assessments. There is a period of transition at present, during which BS 8206-2 has been superseded, but the relevant guidance within BR 209 has not yet been updated. Thus, both BS 8206-2 and BS EN 17037 have relevance. As such, both for clarity and as an interim measure during this transition period, the planning authority will look to receive relevant metrics from BR 209, BS 8206-2 and BS EN 17037.*
- 7.7.4. At the outset I would highlight that the standards described in the BRE guidelines allow for flexibility in terms of their application, with paragraph 1.6 stating that *“Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design”*. It notes that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate etc., and states that industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and arrangement of open space, and these factors will vary from urban locations to more suburban ones.

Information & Assessment

- 7.7.5. The application included a Sunlight, Daylight & Shadow Assessment (Impact Neighbours and Development Performance), Rev. V3a, which was prepared in accordance with Site Layout Planning for Daylight and Sunlight' (2nd edition) and BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. A supplementary Shadow Assessment (Addendum 2) was submitted at RFI stage. The report was based on the original proposal submitted and was not updated to reflect the revised proposal submitted as further information. However, given that the report

was based on the original proposal which was slightly bulkier in scale (in front of Units 1, 2, 5 and 8), I consider that it serves as a useful reference to compare the lesser impacts on surrounding development. I have considered the reports submitted by the Applicant and guidance referenced above and have carried out a site inspection and had regard to the interface between the proposed development and its surroundings, as well as the Third-Party Appeal/observations which have raised concerns in relation to daylight and sunlight.

7.7.6. With regard to daylight within internal rooms, I note that BRE Guidance, with reference to BS8206 – Part 2, sets out minimum values for ADF that designers/developers should strive to achieve, which are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Average Daylight Factor (ADF) is the ratio of total daylight flux incident on the working plane to the area of the working, expressed as a percentage of the outdoor illuminance on a horizontal plane due to an unobstructed CIE standard overcast sky. The BRE guide does not give any advice on the targets to be achieved within a combined living/dining/kitchen area. However, BS guidance outlines that where one room serves more than one purpose, the minimum average daylight factor should be that for the room type with the highest value. For example, in a space combining a living room and kitchen, the minimum ADF should be 2%. The Applicant outlines that the scheme is compliant with the BRE Guidelines in this respect and states that the average ADF for tested living rooms is 3.2% and for bedrooms 2.3%. Although the 1.5% target for kitchen/living rooms was used in the report, I note that all such rooms would also comfortably exceed the higher 2% target, with the lowest value being calculated to be 2.4%.

7.7.7. While this provides a useful context for the site, I acknowledge that the figures cannot be translated to the revised proposal. However, the Applicant states in Shadow Assessment (Addendum 2) Rev. 5 that was submitted as part of the RFI Response “*the design changes bought on by the FI have little change to the overall structural envelope of the building and a re-run check of the impact on windows VSC and APSH showed the same level of compliance with the BRE guidelines as the original application*”. Notwithstanding this and acknowledging that the quantitative analysis has not been submitted for the revised scheme, I note that having regard to the nature of the revisions of the units at RFI stage, it is reasonable to assume that similar or better results would likely result. Having regard to the provisions of the Development

Plan and the Section 28 guidance outlined previously in this section, I do not consider that a daylight/sunlight assessment of the revised proposal is a mandatory requirement in this case. The application does not rely on the 'material contravention' provisions in SPPR 3 of the Building Height Guidelines and, accordingly, there is no mandatory requirement to demonstrate compliance with the BRE or BS standards. I acknowledge that the Apartments Guidelines recommend consideration of the standards when undertaken by development proposers, but do not require that assessments must be undertaken. Furthermore, I note that while Section 15.2.3 of the Development Plan states that daylight and sunlight assessment "should" be submitted in respect of all apartment developments, it is not a mandatory requirement.

7.7.8. In the absence of an updated ADF assessment, I have considered the specifics of the design and layout of the development and the factors that effectively influence daylight/sunlight levels, as set out in the Apartment Guidelines. As previously outlined, the scheme includes 4 (or 44%) dual-aspect units, which exceeds the 33% standard as per SPPR 4. Furthermore, Section 3.19 allows for a relaxation of the 33% requirement on small urban infill sites such as this, which highlights an acceptable standard of dual-aspect provision in this scheme. There are no single-aspect, north facing units. Ceiling heights and glazing are also important factors in daylight/sunlight availability. As outlined above, the ground floor ceiling height for the new building element is 2.7m and as such is compliant with SPPR 5 of the Apartment Guidelines. Unit 2 in No. 2 Ballsbridge Avenue has a ridge height of 3.72m. Significant glazing is generally proposed to serve the individual rooms and I am satisfied that this will make a significant contribution towards daylight/sunlight standards.

7.7.9. In considering the site context, I note that there is no obstructive high-rise development immediately adjoining the development that would significantly reduce daylight/sunlight standards. Therefore, given that the foregoing factors have been well addressed by the design team, I am satisfied that the proposed development will provide units with an acceptable level of daylight/sunlight and that no further assessment is required in this regard.

Impacts on neighbouring properties

7.7.10. The BRE guide acknowledges that, in designing new development, it is important to safeguard the daylight to nearby buildings and I note that the Development Plan also

outlines the need to avoid excessive impacts on existing properties. The Applicant's assessment of the original proposal contains a 'light from the sky' (VSC) and sunlight (APSH and WPSH) analysis for the windows of surrounding properties (the rear of No. 3, 20, 21, 22, 23 Ballsbridge Avenue. It also includes a sunlight analysis of impacts of the open spaces/gardens of neighbouring properties.

7.7.11. In general, Vertical Sky Component (VSC) is a measure of the amount of sky visible from a given point (usually the centre of a window) within a structure. The BRE guidelines state that a VSC greater than 27% should provide enough skylight and that any reduction below this level should be kept to a minimum. If the VSC, with the new development in place, is both less than 27% and less than 0.8 times its former value, occupants of the existing building would notice the reduction in the amount of skylight. The Applicant states that the VSC for all tested windows was greater than 27% or not breaching the 0.8 times its former value for habitable rooms. The average change ratio for VSC is 0.94 and as such the proposal is compliant with the Guidelines in this respect. I note the concerns raised in relation to the rear of No. 3 Ballsbridge Avenue, however I highlight that the existing dwelling is recorded as having a VSC of 16.8 and the proposed development would result in a change of 0.82 (13.8), and therefore, compliance with the BRE has been demonstrated.

7.7.12. The Applicant has also included a sunlight analysis for windows using measurements of annual probable sunlight hours (APSH) and annual probable sunlight hours for the winter period (WPSH). The BRE guide states that living room windows facing within 90° of due south may be adversely affected if the centre of the window receives less than 25% of APSH or less than 5% of WPSH; and receives less than 0.8 times its former sunlight hours during either period; and has a reduction in sunlight received over the whole year greater than 4% of APSH. The Applicant states that all tested windows comply with the annual APSH and winter WPSH.

7.7.13. The Applicant has also carried out a shadow/sunlight assessment for the gardens of surrounding properties. The BRE guide recommends that for it to appear adequately sunlit throughout the year, at least half of the space should receive at least 2 hours of sunshine on 21st March. If as a result of new development this cannot be met, and the area which can comply is less than 0.8 times its former value, then loss of sunlight is likely to be noticeable. The Applicant's analysis of the original proposal demonstrated that all the tested areas would be compliant with the BRE guide

recommendations, except the rear space associated with No. 23 Ballsbridge Avenue. The Applicant prepared supplementary analysis of this area; i.e. a month-by-month analysis using a 2hr metric. The Applicant states *“From this we can see the impact in March/September is disproportionate to that of any other months. The garden/amenity for the other summer months received 2-hr sunlight well over 50% of their surface and the change ratio for all other months well exceeds the standard 0.80 ratio check”*. Should the Board grant permission for the proposal with the omission of Unit 3, it is likely that the results would improve further. Having regard to the results, I am satisfied that the proposal will not adversely impact the amenity of the neighbouring property.

Conclusions on Daylight/Sunlight

- 7.7.14. I again highlight that the mandatory application of the BRE standards is not required in this case by the Development Plan or by Section 28 Ministerial guidelines. Consistent with that approach, the BRE guide itself highlights further the need for flexible interpretation in the context of many other design factors.
- 7.7.15. I acknowledge that no assessment has been submitted for daylight/sunlight standards for the revised scheme. However, I note the Applicant’s comments that there were no significant differences between the two schemes, notwithstanding the quantitative analysis was not submitted. Nevertheless, having considered the design/layout of the proposal and the context of surrounding development, I consider that the proposal appropriately addresses the requirements through suitable provisions relating to aspect, openings, and ceiling heights. Accordingly, I am satisfied that an acceptable standard of daylight/sunlight will be provided within the proposed development. I note the Third-Party Appellant’s comments in relation to the assessment, including argues that the assessment is flawed as it has not taken account of the surrounding ground levels. However I highlight to that no empirical evidence has been submitted with the Appeal to demonstrate that the level difference would have a material impact on the Applicant’s results. As stated above, I am satisfied that the assessment is robust and provides an accurate indication of potential daylight impacts.
- 7.7.16. In relation to impacts on neighbouring windows and open spaces, I am satisfied that the impacts would be acceptable in accordance with recommended flexible interpretation of BRE guidance.

7.7.17. The appeal site is located in a well-connected urban area and as previously outlined, compact development and brownfield redevelopment is an objective of the NPF. Accordingly, I am satisfied that the proposed development is acceptable at this location and that it will not excessively detract from the amenities of surrounding properties by reason of daylight/sunlight impacts.

7.8. Traffic and Car Parking

7.8.1. No car-parking or vehicular access is included within the proposed development. I note that Chapter 4 of the Apartment Guidelines addresses car-parking requirements and states that requirements should be minimised, substantially reduced or wholly eliminated in certain circumstances for higher density apartment developments in 'central and/or accessible urban locations'. Section 4.20 states that these locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services. Both Lansdowne Dart station and Sandymount Dart station are within a 10 minute walk of the subject site and as such I am satisfied that the site comfortably falls within the 'central and/or accessible urban locations' category.

7.8.2. In considering the absence of car-parking facilities, I am conscious of NPO13 of the NPF and the Building Height Guidelines of 2018, which support a performance-driven approach towards land use and transportation. The Apartments Guidelines also outline a default policy that car-parking should be minimised, substantially reduced or wholly eliminated in highly accessible area close to city cores or public transport systems. As illustrated on the Development Plan's Map J, the site is located in Zone 2. Furthermore, Merrion Road is designated a Bus Connects Spine and a Proposed Bus Connects Radial Core Bus Corridor. Table 2 attached to Appendix 5 states that a maximum of one car per apartment is permissible in Zone 2. Section 4.0 of Appendix 5 states:

A relaxation of maximum car parking standards will be considered in Zone 1 and Zone 2 for any site located within a highly accessible location. Applicants must set out a clear case satisfactorily demonstrating a reduction of parking need for the development based on the following criteria:

- *Locational suitability and advantages of the site.*
- *Proximity to High Frequency Public Transport services (10 minutes' walk).*
- *Walking and cycling accessibility/permeability and any improvement to same.*
- *The range of services and sources of employment available within walking distance of the development.*
- *Availability of shared mobility.*
- *Impact on the amenities of surrounding properties or areas including overspill parking.*
- *Impact on traffic safety including obstruction of other road users.*
- *Robustness of Mobility Management Plan to support the development.*

7.8.3. As stated above, Lansdowne Dart station and Sandymount Dart station are within a 10 minute walk of the site and Merrion Road is designated a Bus Connects Spine and a Proposed Bus Connects Radial Core Bus Corridor. Furthermore, as outlined by the Applicant there are a number of car rental companies operating in the area. There is a good footpath network in the area. Having regard to the foregoing, I have no objection to the absence of car-parking within the proposed development. The development is limited in scale, contains mainly studio/1-bed units, and is unlikely to attract car-dependant residents. I consider that the proposal will encourage more sustainable modes of transport and will not result in additional traffic or parking congestion at this location.

7.8.4. The Applicant has provided 19 bicycle parking spaces in lieu of car-parking. This exceeds the minimum Development Plan requirement of 1 space per bedroom and one per two apartments. Accordingly, I consider that the quantum of cycle parking to be acceptable. The covered spaces are dispersed within the courtyard and would be conveniently and securely located within the gated access lane. As stated above, I recommend that Unit 3 be omitted and the bicycle parking is grouped in this space.

7.8.5. I note the issues raised by the local residents in relation to alleged dangerous/illegal parking of delivery vehicles. However, I consider that this matter is outside the scope of the application. I note that the Applicant confirmed at RFI stage that the dished footpath to the front of No. 1 Ballsbridge Avenue would be removed and raised, as

there is no vehicular access proposed to the scheme. I have no objection to this proposal.

7.8.6. Having regard to the foregoing, I consider that, subject to appropriate conditions, there would be no objection to the proposed development on grounds of access, traffic, parking or transportation issues.

7.8.7. Flood Risk

7.8.8. The site is located in Flood Zone A and as such a Site-Specific Flood Risk Assessment Report (dated March 2021) was submitted with the application. The Third-Party Appellant argues that the assessment is flawed and that there are no measures to mitigate residual risk to the area. It is further stated by the Appellant that the Justification Test has relied excessively on mitigation rather than assessment of the risk and the analysis is flawed.

7.8.9. The Applicant states that the OPW's flood.info maps highlight that part of the site is at risk (medium) of fluvial flooding for a 1 in 100 year event and that the site is on the boundary of a pluvial flooding for a 1 in 100 year event (low risk). Furthermore, the assessment makes reference to the former Development Plan's SFRA, which noted that the site is located in Flood Zone A and is within the defended area – Dodder Flood Alleviation Works. I note this remains unchanged in the current Development Plan's SFRA. The assessment highlights the site is not at risk of tidal or groundwater flooding. The Applicant outlines that the Dodder Flood Alleviation Scheme provides protection against a 100-year event (1.0% AEP), which also includes an additional allowance for future climate change and is therefore also allows for the potential rise in water levels in the future. There is an additional allowance in the defences for an increase in fluvial water levels of 300mm above current levels and therefore the site benefits from being a defended zone and therefore any flood risk is considerably lowered. The Development Plan's SFRA requires that the minimum finished floor level for a highly vulnerable development in Flood Zone A (or B) should be higher than the 1 in 100 year fluvial flood level, with suitable allowance for climate change and a suitable freeboard of +300mm. The Applicant states that as the development is in a defended area, no compensatory storage is required. The green roof will provide some initial storage of rainwater, while also reducing the rate to 2l/s at which the water discharges to the network. In addition, as highlighted by the Applicant the proposed

permeable paving will also reduce the rate of run-off from the site, in comparison to the existing rate.

7.8.10. The Applicant states that the OPW CFRAMS indicates that the 100-year design fluvial water level in the vicinity of the subject site is +0.25m. No. 18 Merrion Road had an existing FFL of +5.59m AOD, which is above the 1 in 100 year predicted flood level. However, the rear of the premises which will serve as the entrance to the courtyard is at +4.43mAOD. A single entrance to the lower ground floor level will be protected with a new flood barrier. The proposed ground floor level for the new building element of the proposal is +4.8m AOD and as such, is above the 1 in 100 fluvial flood level (+4.45m AOD). The ground level in front of No. 2 Ballsbridge Avenue is +4.2m AOD, resulting in a predicted flood level of +4.45mAOD. As such, a flood protection barrier is proposed at the entrance to the house and around the private open space associated with this unit to the rear. In addition, the development would be linked to an early warning fluvial flooding alarm system with flood protection barriers to be provided to openings at ground floor level.

7.8.11. The Site-Specific Flood Risk Assessment Report includes a justification test, as the site is positioned in Flood Zone A and the proposal is classified as Highly Vulnerable. The Applicant's First-party Response to the Third-Party Appeal includes further commentary on the Justification Test. In response to the test, the Applicant states that the site is zoned for development and that the area is essential for expansion of the City. Furthermore, the Applicant outlines that the site forms part of the established suburb and that the proposal will provide for a high density scheme, and that there are no suitable alternative lands for the particular use in areas at lower risk of flooding within or adjoining the urban settlement. In addition, the Applicant reiterates that the site is brownfield and behind existing floor defences. Having regard to the foregoing, the Applicant states that subject to the mitigation measures (flood barriers at entrances to the site and buildings, advanced warning systems, implementation of techniques in accordance with Dublin City Council's Code of Practice for Flood Resilience and Adaption Measures (e.g. structural wall and columns designed for short-term immersion), and the proposed drainage system, including the installation of non-return valves) being maintained on a regular basis), the scheme is sufficient to provide a suitable level of protection to the proposed development. Furthermore, I note that the green roofs will facilitate a reduction in the run-off rate from the site. Should the Board

grant permission for the proposal, I recommend for the purposes of clarity that a condition be attached to the Order requiring that the mitigation measures are implemented in full.

7.8.12. I am satisfied that the submitted site-specific flood risk assessment including the Justification Test is robust and that it accords with relevant national guidance and that the proposed development would not cause a significant flood risk to surrounding properties. Furthermore, I am satisfied that the proposed mitigation measures are appropriate. I note that the Third-Party Appellant has not submitted any technical or empirical evidence supporting the arguments that the assessment is flawed. I highlight that the Local Authority's Drainage Department had no objection to the proposal. In my opinion, the proposed development does not represent a flooding hazard. Having regard to the foregoing, I do not recommend that planning permission is refused for the proposed development on the basis of flood risk.

7.1. Procedural and Other Matters

Validity of the Planning Application

7.1.1. The Third-Party Appellant and Observers raise a number of issues in relation to the validity of the application. At the outset, I highlight that it is my opinion that procedural matters, such as a determination as to the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements.

7.1.2. In relation to the public notices, the Appellant states that there was no reference to the fourth floor, and that the description suggests that there is frontage to Merrion Road, which is misleading as the site comprises a rear backland area. I am satisfied that the statutory notices made reference to No. 18 Merrion Road and clearly outlined the areas of the unit, which were not subject of the application (i.e. the ground floor restaurant). The site includes the upper levels of No. 18 which fronts onto Merrion Road and as such, in my opinion, the notices are accurate in this regard. I am satisfied that the description of the subject proposal provides for a sufficient and reasonable explanation of the nature of the proposed works for the benefit / notification of third parties. I note that the notices were considered acceptable by the Planning Authority.

- 7.1.3. In addition, the Third-Party Appellant and Observers highlight that the rooftop terrace was not advertised in the statutory notices. The terrace was proposed as part of the RFI Response and as such did not form part of the original proposal and was not included in the notices. Notwithstanding that the Local Authority omitted the terrace from the proposal, the Planning Officer did not consider the terrace to be a significant amendment to the scheme and as such, there was no requirement or provision for the Applicant to readvertise the notices at this stage of the process. As discussed above, I do not consider that it would impact the area's existing residential or visual amenity and the above assessment represents my de novo consideration of all planning issues material to the proposed development. Furthermore, I note that the residents closest to the proposed development have made Observations to the Local Authority and the Board. I highlight that the Board has the discretion of requesting the Applicant to readvertise the notices prior to determining the case.
- 7.1.4. The Applicant highlights that there were no foundation plans submitted with the application and that there are inadequate ground levels, dimensions and neighbouring buildings/features shown on the plans. I highlight that there is no basement associated with the proposed development. Furthermore, I am satisfied that there is sufficient detail in the application to assess the full extent of the proposed development and to make a determination.
- 7.1.5. Notwithstanding the foregoing, in my opinion, procedural matters, such as the validation of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the application documentation as lodged satisfied the minimum statutory requirements. I do not propose to comment further on this matter other than to state that the right of third parties to make a submission or to subsequently lodge an appeal would not appear to have been prejudiced in this instance.

Separate Codes

- 7.1.6. The Third-Party Appellant raises concerns in relation to fire safety and in particular to the fact that no access for fire emergency vehicles is provided. As highlighted by the Applicant, the issue of compliance with Building Regulations will be evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.

Precedent

- 7.1.7. In relation to the application establishing a precedent for development of this kind, I highlight that that neither the Local Authority nor An Bord Pleanála are bound by precedent decisions, and each application/appeal is assessed on its own merits.

8.0 Appropriate Assessment

- 8.1.1. The proposed development involves the demolition of 1st & 2nd floor rear extension to No. 18 Merrion Road, single storey elements to rear of No. 1 and 2 Ballsbridge Avenue and ancillary single storey sheds and outbuildings in the associated rear yards, and the construction of nine apartments on a site area of 515 sq m. It is proposed to connect to the existing surface water and wastewater network serving the area. The surrounding area is predominantly composed of artificial surfaces and is characterised by a mix of retail, commercial and residential development of varying scale.
- 8.1.2. None of the submissions or observations received in connection with the application or the appeal have raised the issue of Appropriate Assessment.
- 8.1.3. The nearest Natura 2000 sites are in the Dublin Bay area and include the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC (both c. 1.5km to the east). I acknowledge that there are several other Natura 2000 sites in the wider surrounding area, including more distant sites within Dublin Bay. Having carried out AA screening for other developments in the Dublin city area I am conscious that the development is indirectly connected to the Natura 2000 sites within Dublin Bay via the surface water and foul water networks. However, the existence of these potential pathways does not necessarily mean that potential significant impacts will arise.
- 8.1.4. With regard to surface water, the development incorporates appropriate management measures to regulate discharge flows in terms of quantity and quality. There is also limited potential for surface water contamination during construction works but I am satisfied that best-practice construction management will satisfactorily address this matter. There would be significant dilution capacity in the existing drainage network and receiving water environment and there is known potential for the waters in Dublin Bay to rapidly mix and assimilate pollutants. Accordingly, I am satisfied that there is no possibility of significant impacts on European sites within Dublin Bay from surface water pressures from the development.

- 8.1.5. The wastewater emissions from the development will result in an increased loading on the Ringsend WWTP. However, 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 likely completion of the Ringsend WWTP extension in the short term, I am satisfied that there is no possibility that the additional foul water loading resulting from the development will result in significant effects on European sites within Dublin Bay.
- 8.1.6. Having regard to the above preliminary examination, it is concluded that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site. No mitigation measures have been relied upon in reaching this conclusion.

9.0 Recommendation

- 9.1. I recommend that planning permission for the proposed development should be granted, subject to conditions, for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the urban location of the site in close proximity to a wide range of existing and proposed 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, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum of development in this accessible urban location, would not seriously injure the amenities of surrounding properties in terms of overbearing, loss of privacy, overshadowing/loss of daylight or seriously detract from

the character of the area, and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the planning authority on the 1st day of October, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - i. Proposed Unit 3, to the rear of No. 3 Ballsbridge Avenue shall be omitted from the scheme.
 - ii. The bin storage area shall be relocated from the side of No. 18 Merrion Road to the position where Unit 3 is proposed. The area shall be screened, adequately ventilated, drained and illuminated.
 - iii. The proposed bin storage area to the side of No. 18 Merrion Road shall only be used as a staging area for refuse collection.
 - iv. Covered bicycle parking shall also be provided in the location of where Unit 3 is proposed.

Having regard to the above amendments, a revised courtyard layout and a detailed landscape management plan (including privacy measures for the proposed ground floor units) shall be submitted for written agreement with the Local Authority prior to the commencement of the development.

Reason: In the interest of protecting the residential amenity of existing and proposed properties and the visual amenity of the area.

3. The mitigation measures outlined in Section 5.6 of the Site-Specific Flood Risk Assessment Report (dated March 2021) that was submitted with the application shall be implemented in full. In addition, a flood warning and evacuation plan shall be submitted and agreed with the Local Authority.

Reason: In the interest of flood protection.

4. 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.

Reason: In the interest of visual amenity.

5. The proposed balustrade surrounding the roof terrace shall be constructed with opaque glazing. The details of same shall be submitted and agreed with the Local Authority prior to the commencement of development.

Reason: In the interest of visual amenity.

6. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

8. Proposals for a development name, numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs and house numbers shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements / marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

9. 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.

Reason: In the interest of residential amenities of surrounding properties and in the interest of clarity.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, management measures for noise, dust and dirt, construction traffic management proposals, and details of how the trees on the public realm corner of Merrion Road and Ballsbridge Park/Avenue will be protected during the construction of the project.

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

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

Reason: In the interest of sustainable waste management.

12. (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.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

13. Prior to the occupation of the development, a Mobility Management Plan / Residential Travel Plan shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents/occupants/staff employed in the development and to reduce and regulate the extent of parking. The plan shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport and reflecting the needs of pedestrians and cyclists.

14. Any alterations to the public road/footpath shall be in accordance with the requirements of the planning authority and where required, all repairs shall be carried out to the satisfaction of the planning authority at the applicant's expense.

Reason: In the interests of clarity, public safety and amenity.

15. 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.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

16. 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.

Reason: In the interests of visual and residential amenity.

17. No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication antennas, shall be erected at roof level other than those shown on the plans 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.

Reason: In the interests of visual and residential amenities.

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

19. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or,

in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

Susan Clarke
Planning Inspector

22nd December 2022