



An
Bord
Pleanála

Inspector's Report ABP 312113-21

Development	Demolition of mixed use buildings and construction of 1 no. retail unit, 67 build to rent apartments and ancillary works.
Location	63, 65, 65A, 67, 67A Collins Avenue East, Dublin 5.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2934/21
Applicant	Vervdev Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	<ol style="list-style-type: none">1. Clontarf Golf and Bowling Club2. Lesley Byrne & Derek Breen3. Paul Daly4. Cllr. Deirdre Heney5. Lisa Lynn
Observer(s)	None

Date of Site Inspection

13/04/22

Inspector

Pauline Fitzpatrick

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1.0 Site Location and Description

- 1.1. The site, which has a stated area of 0.194 hectares, is located on Collins Avenue East c. 400 metres to the north-west of Killester village. It forms part of a terrace of 2 and 3 storey buildings (the latter with a recessed 4th storey) in commercial, retail and residential use. The site comprises what was originally a cinema which formed the central component of the terrace. Whilst previously used for commercial purposes it is now vacant. The site also comprises two further units, one which is occupied at ground floor level with residential above. The terrace comprises of a further four units. That to the north-west of the site is occupied at ground floor level with residential above. 2 no. of the 3 units to the south-east are vacant at ground floor level. Again they have residential above.
- 1.2. The terrace is accessed from lanes to the north-west and south-east. As the old cinema building is built up to the boundary with the Clontarf golf club grounds the lanes do not connect. The lanes range in width, up to 4.6 metres, with footpaths along same for part. Car parking along both was noted on day of inspection.
- 1.3. Clontarf Golf Club bounds the site to the south. No. 71 Collins Avenue East to the north-west is separated from the terrace by the laneway.
- 1.4. Collins Avenue East to north and north-east and Clanawley Road to the north are mature residential areas comprising of two storey, semi-detached and terraced dwellings.

2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on the 10/06/21 with further plans and details submitted 14/10/22 following a further information request dated 06/08/21:
- 2.2. As amended the proposal entails:
 - Demolition of existing units 63, 65, 65a, 67 and 67a,
 - Construct 7 storey (upper floors recessed) building comprising of:
 - 554 sq.m. retail unit at ground floor level
 - 67 no. build to rent apartments as follows:

33 no. 1 bed units

34 no. 2 bed units

- 153 sq.m. of internal amenity space at 1st floor level to include shared workspace, games room and media room adjacent to 561 sq.m. of external communal open space at podium level,
- 156 no. bicycle parking spaces,
- 24 no. parking spaces with vehicular access from the laneways.

2.3. The application is accompanied by:

- Planning Report
- Draft Build to Rent Covenant
- Childcare and Community Assessment Report
- Housing Quality Assessment & Schedule of Accommodation
- Architectural Design Statement
- Daylight and Sunlight Analysis Report (amended by way of further information)
- Photomontages (amended by way of further information)
- Transport Assessment & Mobility Management Plan
- Building Life Cycle Report
- Construction Management Plan
- Arboricultural Impact Assessment
- Landscape Architect's Design Report
- Townscape and Visual Assessment Report
- Bat Survey
- Appropriate Assessment – Screening Report

2.4. A notional masterplan with supporting plans and drawings of how the remainder of the terrace could be developed accompany the application. The applicant has no legal interest in the adjoining properties.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 25 conditions. Of note:

Condition 5: €268,000 contribution in lieu of public open space.

Condition 7: Locations where opaque glazing and screens to be installed.

Condition 8: Type of use in commercial unit and shopfront requirements.

Condition 9: Resident amenity space not to be used for commercial use or subdivided from the apartment scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

1st Planner's report dated 04/08/22 notes:

- The proposal would set an obvious precedent for the rest of the commercial terrace.
- It is considered that the proposed density is appropriate as it relates to the redevelopment of a compact, standalone brownfield site.
- It would have been preferable to have seen a complete proposal for the parade. A future massing study accompanies the application.
- The proposal will erupt somewhat unilaterally from the host terrace and, on its own, could be regarded as an incongruous feature within the streetscape. As shown in terms of the potential redevelopment of the entire parade, the future redeveloped wings would integrate visually with the subject proposal.
- If there was no prospect of the entire terrace redevelopment then consideration might have to be given to lowering the proposal in relation to the existing terrace.

- It is not considered that the transition from the Z9 zoning to the redeveloped site is particularly problematic in urban design terms. Such a juxtaposition at this interface will not unduly affect 3rd party residential amenity.
- There should be some indication of how the future wings can be efficiently integrated with the subject proposal.
- Further impacts on 3rd parties and prospective occupants from a comprehensive redevelopment of the entire terrace should be considered at this stage.
- The scheme is considered sufficiently articulated due to the application of high quality finishes and particularly the vertical movement provided by the recessed balcony arrangement which help break up the massing and horizontal movement of the block especially with regard to its primary presentation onto Collins Avenue East.
- The proposal complies with the height limitations of the development plan.
- The presence of trees may potentially impact on the outlook for some future residents.
- Opaque glazing to the balconies recommended in certain locations.
- Issues arising with the communal open space areas to be addressed.
- Contribution in lieu of public open space.
- Impact of future potential redevelopment of the commercial terrace to be examined with regard to impacts on 3rd party and prospective occupants' access to daylight and sunlight.
- Applicant to detail now the proposal will safely interact with the golf club.

A request for further information recommended.

2nd Planner's report dated 10/11/21 following further information considers that the applicant has demonstrated that the end of terrace 'wings' can be redeveloped in sympathy with the proposed scheme. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

The 1st report from Transportation Planning Division dated 28/07/21:-

- Having regard to the reduced quantum of car parking proposed it is important to ensure that the alternative modes can function adequately to provide a range of options for future residents.
- Measures will be required to prevent further overspill parking on the lane.
- The principle of a loading bay in this area would be beneficial. It is subject to separate statutory processes under the Roads Act.
- It is considered that adequate parking for the remaining commercial units will remain.
- Further information on bicycle parking and store and refuse collection required.

The 2nd report from Transportation Planning Division dated 14/10/22 following further information has concerns regarding the potential redevelopment of the remainder of the terrace and impact of parking overspill onto the adjoining road network. A proactive mobility management scheme will be required. There is no objection to the current proposal subject to conditions.

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

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3rd party appeals summarised in section 6 below.

4.0 Planning History

The planning history on the site is detailed in the Area Planner's report on file, the latest dating back to 2012.

Adjoining Sites

308464-20 - 2 storey dwelling to rear of 71 Collins Avenue East. 1st party appeal against conditions.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016

The site is within an area zoned Z3, the objective for which is to provide for and improve neighbourhood facilities.

Retail and residential are permissible uses within the zone.

Chapter 4 sets out policies for density and urban design.

Policies SC13-17 and SC25 are applicable.

Chapter 5 sets out policies for residential development.

Policies QH7, QH8, QH13, QH18, QH19, QH20, QH22 are applicable.

Section 14.7 addresses Transitional Zone Areas.

Chapter 16 sets out the Development Management requirements.

Section 16.7 sets out requirements in terms of Building Heights.

The site is within an area classified as 'outer city' within 500 metres of a rail hub where heights up to 24m (commercial and residential) will be considered.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Lesley Byrne and Derek Breen (60 Collins Avenue East)

- The plans do not reflect the remodelling of their dwelling.
- The proposal will give rise to overshadowing, loss of daylight and sunlight and will adversely impact their residential amenities.
- The proposal is overbearing and constitutes overdevelopment of the site.
- Overlooking would arise.
- The design is not in keeping with the existing built environment.
- There is a history of flooding in the area.

6.1.2. Paul Daly (71 Collins Avenue East)

The submission by OC+C Architects on his behalf can be summarised as follows:

- The plot ratio for the development is 4 which is double the indicative plot ratio for such a neighbourhood centre in the City Development Plan. The site coverage at 100% exceeds the indicative figure of 60%. The proposal is 5 storeys taller than adjoining buildings. Whilst in isolation these metrics can be blunt tools to categorise developments, in combination, they are significant indicators that the application represents a significant overdevelopment of the site.
- The proposal will have a significant and negative impact on the visual landscape and would be overbearing. There will be an incongruous juxtaposition of 2 storey dwellings and 7 storey mixed use development.
- The setting back of the upper two floors does little to limit the impact on his property and future mews development.
- It cannot be considered as a standalone development as it is in the middle of a terrace. It will set a precedent for the terrace and the area as a whole.
- The area cannot be considered a transport hub or interchange.

- There is lack of capacity in the existing laneway to service the development. The Transportation Report accompanying the application is flawed. The client's mews dwelling has not been acknowledged.
- The increase in traffic on the laneway is likely to create additional congestion on Collins Avenue East due to the inability of 2 cars to pass on sections. It is likely to create a safety hazard.
- The proposed development would effectively sterilise adjoining potential mews development to the west of No.71 Collins Avenue East.
- The proposal puts forward a one way system for the apartment car park. To then suggest that the laneway remain two way for neighbouring properties is unworkable.
- The Daylight and Sunlight Assessment fails to carry out an assessment on the 3 windows in the gable wall of his dwelling which all face east. It fails to incorporate the permitted mews dwelling. The outdoor space will be impacted due to the additional shadowing and loss of sunlight.
- The proposal will devalue property.

6.1.3. Cllr. Deirdre Heney

- The proposal constitutes overdevelopment. It will result in overlooking and loss of privacy. It would contravene materially the Z1 zoning objective.
- Should permission be granted the development should be reduced to 3 storeys with 4th and 5th storeys set back.
- Balconies should be conditioned to be provided to the rear and not to the front elevation.
- The proposal will result in loss of sunlight and daylight to adjoining properties. There is little evidence that the City Council gave adequate consideration to the impacts on future residents of the development and residents who live in the same terrace.
- There are misleading comparisons made to other apartment developments. The cases cited are not comparable.

- The reduction in the current (albeit unused) retail, office and services element of the site and the number of dwelling units proposed is not in keeping with the Z3 zoning objective.
- The proposal contravenes the provisions of policies SC10, SC 12, RD19 in terms of neighbourhood centres. The proposal is a diminution of the current commercial/office/retail/employment potential.
- The AA Screening does not mention the Wad River Flood Alleviation Scheme - Phase 3 which has yet to be carried out. The impact of the proposed development on the said scheme is of concern.
- The scheme design is at variance with the existing character of the area. The plan requires the avoidance of abrupt transitions in scale in transitional zone areas.
- There is the potential for the environs of the site to have nesting birds and other wildlife. The bat survey noted foraging activity of the common pipistrelle proximate to the treeline to the rear of the site. The species is protected under the Habitats Directive.
- The proposal merits screening for EIA.
- Care is required in the removal of hazardous material from the site. Impact of the construction phase on adjoining residents and businesses should be considered.
- There is an over concentration of 1 bedroom units in the proposal. 35 % of the units are single aspect.
- Build to rent units do not provide an opportunity for local people to purchase a home or down-size.
- The laneway is inadequate to accommodate the vehicular movements which would be generated by the development.
- 24 parking spaces is insufficient for 67 apartments. Overspill will arise. There are existing parking issues in the area.
- Issues with the accuracy of the traffic surveys.

6.1.4. Clontarf Golf and Bowling Club

The submission by Douglas Hyde on its behalf, which is accompanied by a Safety Appraisal, can be summarised as follows:

- No opportunity was given to interested parties to make submissions on the significant further information submitted.
- EIA screening is required in this instance as the proposal is likely to have significant effects on the environment. The preliminary examination under Article 103(1)(a) of the Planning and development Regulations, 2001, as amended, was invalid because the information required under Section 7A was not submitted.
- There are serious deficiencies in the AA Screening Report. The bat survey was inadequate with no regard had to the Wad River Flood Alleviation Scheme.
- No information is provided on the likely environmental effects from asbestos removal.
- No flood risk management has been provided. It does not comply with the Guidelines on Flood Risk Management.
- The proposal would adversely impact on the recreational amenities and playability of the golf course, in particular the 12th and 13th holes. The design of the scheme makes no provision for the safety of future residents. Reference to erection of safety netting is vague. No expert report by a qualified Golf Course Architect was prepared to support the assertions that no impact on the use and operation of the golf course would arise. The applicant has not provided any analysis of the safety and protection issues arising. Most of the trees in the mature tree belt along the site boundary are dead or dying and must be felled for safety reasons.
- The proposal materially contravenes residential amenity policies of the development plan. It fails to comply with the requirements for transitional zone areas.
- The proposal does not comply with the Section 28 Building Heights Guidelines.

- The Daylight and Sunlight Assessment is deficient. It assumes there are no trees. Regard is not had to European Standard EN17037-2018. The proposal fails to incorporate necessary 'compensatory design solutions' despite its failure to satisfy the European Standard. It fails to meet the requirements of SPPR 3 of the Building Heights Guidelines.
- The development would have an overbearing impact on adjoining properties, would fail to successfully integrate with the existing pattern of development and would not make a positive contribution to the character and identity of the area.
- The application does not include:
 - Construction and Environmental Management Plan,
 - An Assessment of Construction Impacts
 - Dimensions of foundations for the building as required by the Planning and Development Regulations, 2001, as amended.
 - Report on the likely impact of the construction of the foundations on occupied dwellings within the terrace.

6.1.5. **Lisa Lynn (64 Clanawley Road)**

- The proposal will overlook adjoining dwellings.
- The commercial component is smaller than existing thereby reducing the opportunity for small local traders. It would have a negative impact on the existing community.
- No consideration has been given to the transitional zone requirements.
- The height of the proposal is excessive.
- The scale and density will adversely impact neighbouring properties by reason of overshadowing and loss of light.
- No consideration has been given to the River Wad Flood Alleviation Scheme.
- The scheme does not offer the potential for purchase of units.

6.2. Applicant Response

The submission by John Spain Associates on behalf the applicant, which is accompanied by supporting plans and details can be summarised as follows:

6.2.1. Adequacy of Documentation, EIA and AA Screening

- The proposal is sub threshold. It is considered that the proposal does not meet the qualifying criteria for sub-threshold development that would be likely to have significant effects on the environment as per Schedule 7 of the Planning and Development Regulations, 2001, as amended. There is comprehensive information provided with the application. Dublin City Council concluded there is no real likelihood of significant effects on the environment arising from the development at preliminary examination and a screening determination is not required. This is provided for in Article 103(1)(b)(ii) of the Regulations.
- A Construction and Environmental Management Plan is not a requirement of the Planning and Development Acts and Regulations. Conditions 12 and 15 are accepted.
- An asbestos study accompanies the appeal submission. Its removal is covered by legislation and would be carried out under controlled conditions. Its removal has been appropriately addressed within the Construction Management Plan and Preliminary Construction and Operational Waste Management Plan. The provisions of the said plans as well as the conditions attached to the permission will ensure human health and public safety is not compromised and that the environment is suitably protected.
- An AA Screening was submitted which identified no direct pathways to Natura 2000 sites. A Stage 2 assessment was screened out.
- The bat survey was undertaken by a suitably qualified person in accordance with appropriate guidance.
- The development would have no impact on the existing tree belt. A small number of trees are in decline.

6.2.2. Height, Design and Visual Impact

- The development plan allows higher plot ratios in certain scenarios, many of which apply in this instance. The proposed plot ratio is considered appropriate primarily owing to the site's inner suburban location, brownfield nature, existing infrastructure provision and accessibility to excellent public transport links. A higher plot ratio is considered necessary to optimise its redevelopment in accordance with the principles and policy objectives of the NPF and RSES.
- It does not constitute overdevelopment as proposals of such scale and nature are consistent and justifiable having regard to the evolving urban context in such location and consistent with national policy in terms of increased density and compact growth in accessible urban areas.
- The proposal, with a total height of 23.2 metres, is consistent with the City Council's Height Strategy set out in section 16.7.2 of the development plan which sets a maximum height of 24 metres for residential buildings in rail hub locations i.e. within 500 metres of a rail station.
- The site is suitable for the building height as proposed owing to its location in a transitional area in close proximity to high capacity public transport and services.
- It responds appropriately to the existing development and steps down sensitively to site boundaries with suitable setbacks included at upper floors.
- Precedent exists for such type development in comparable locations.
- The proposed design will enhance the legibility and appearance of the streetscape. The proposed finishes are reflective of a new and emerging architectural approach and evolving urban context. The choice of brick colour is reflected in the residential units opposite the scheme and are considered to be in keeping with the local context.
- The proposal occupies the entire ground floor level of the site so as to maximise the use of the plot while providing active shop frontages and improvements to the public realm and amenity at this level. On the upper

floors the building is set back progressively so as to reduce visual impact and enhance access to natural daylight and privacy.

- The rhythmic design of the series of recessed balconies on the front elevation will visually break down the massing and length of the building.
- The architectural design has been carefully considered to maximise southerly aspects across the Z9 zoned open space lands to the south.
- The tree belt will screen the development from the golf course.
- The change to the landscape and visual environment will not block any long distance views from any receptor.

6.2.3. Amenities of Adjoining Property

- The proposal does not include any works on 3rd party lands.
- The proposal complies with the Z3 zoning objective in providing residential and retail.
- The proposal will have a positive impact on the existing mix of uses in the area and will enhance the tenure of residential development which is characterised by terraced and semi-detached 2 storey dwellings.
- The proposal has been sensitively designed to have regard to the amenity of adjoining property. The separation distances to the properties to the north range between 28.4 metres and 31.2 metres and exceed the 22 metre requirement. This separation distance is equal to that currently in existence on site whereby existing residential units face onto Collins Avenue East.
- A separation distance of 17.725 metres is maintained to No. 71 Collins Avenue East to the west with no windows in the gable end to negate overlooking issues. The upper floors are setback increasing this distance further.
- The proposal has been modulated to minimise overlooking and loss of light.
- The Daylight and Sunlight Assessment notes that in terms of VSC there is a minor reduction to a small number of windows with one window marginally below the recommendations of the BRE guidelines. Any reduction to daylight in neighbouring dwellings would be imperceptible and the impact minor. All

windows retain Annual Probable Sunlight Hours in excess of 25% and the majority retain a winter PSH in excess of 5%. Two windows do not meet the winter sunlight hours at present. Any loss of sunlight would be imperceptible.

- The proposal complies with the BRE guidelines in respect of VSC to dwellings to the north at 60 Collins Avenue East and to the west at 71 Collins Avenue East with amenity spaces assessed achieving BRE standards.
- An assessment of the windows in the eastern elevation of No.71 Collins Avenue East demonstrates that they meet BRE recommended standards with the development in place. The minimal overshadowing of the rear garden during morning hours of 21st March and at 11am 21st June is considered acceptable in the context of the site's urban location
- All rooms within the proposed development will be in compliance with EN 17037:2018
- The effects of trees was calculated in section 5 of the further information response with the result indicating that there would be adequate daylight provision to the units.
- Conditions attached to the permission require opaque screens to the balconies and screens at podium level and to a number of apartments.

6.2.4. Impact on Clontarf Golf Course

- The applicant was not obliged to submit a report by a golf course architect. A report has since been prepared by a suitably qualified person and accompanies the appeal response.
- There is a substantial elevation difference between the level of the golf course and the 1st floor level of the development. There is also a significant tree belt in between.
- A drawing accompanying the appeal response specifies the potential, indicative location of safety netting. The applicant is willing to accept a condition in this regard if deemed necessary.
- The assertion that the majority of the trees in the tree belt within the golf club are dead or dying is not accepted.

- Responsibility for mitigation measures for mis-struck golf balls lies with the golf club.

6.2.5. Traffic and Transport

- The Transport Assessment confirms the viability and safety of the proposed vehicle access strategy.
- 24 car parking spaces and 159 cycle spaces are considered acceptable having regard to the build to rent nature of the development and the site's proximity to high frequency and high capacity public transport.
- The laneway at 4.6 metres is wide enough to allow 2 cars to pass if they meet. This will enable the western section of the laneway to remain as 2-way to serve the permitted dwelling to the rear of No.71 Collins Avenue East.
- There are long established travel patterns from the existing units along the laneway.
- Due to low frequency of vehicles using the laneway there will be a low probability of two cars meeting along the western section of the lane with sufficient space if they do.

6.2.6. Flood Risk

- Flooding has been assessed. Surface water drainage at the site will be improved. No impacts on the Wad River Alleviation scheme are anticipated.
- The implementation of SuDS measures on site will improve the potential flooding of the River Wad which is an improvement of the current situation on site. No in combination effects are foreseen from the River Wad Flood Alleviation Scheme.

6.2.7. Other Issues

- The proposed unit mix is in compliance with the provisions of the Apartment Guidelines 2020 in respect of Built to Rent schemes. It will add positively to the accommodation mix and tenure in Killester.
- The proposed retail unit will extend beyond that of the existing retail units.

- Information on the construction impacts and dimensions of foundations are not required to be submitted under the provisions of the Planning and Development Regulations 2001, as amended.
- Details of the development's foundations have been provided and demonstrate no adverse impacts on adjoining properties.
- The planning authority determined that the further information response did not constitute significant further information and, therefore, public notices were not required.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

None.

6.5. **Further Responses**

The applicant's response to the 3rd party appeals was circulated for comment.

6.5.1. **Cllr. Deirdre Heney**

In addition to reiterating points made in her appeal I note:

- There is no mention of the impact on the residents in Nos. 61 and 69 which form part of the terrace.
- There is lack of clear evidence of that which is required by SPPR 7b of the Guidelines for New Apartments. The amount of shared space is not conducive to sustainable living as it is insufficient.
- The draft city development plan seeks to avoid a proliferation of build to rent schemes, limits schemes of less than 100 units and require details of how such schemes contribute to the sustainable development of the broader community.

- The Board should seek clarity as to how the communal facilities etc. will be maintained should units be sold following the time period specified in SPPR7(a).
- There is no evidence of high demand for build to rent residential in or in the vicinity of the site.
- The precedent cases cited are not comparable.

6.5.2. **Clontarf Golf and Bowling Club**

Submission by Douglas Hyde accompanied by arborist report on its behalf. In addition to reiterating a number of points made in its appeal submission the following are noted:

- The interested parties were not provided with the information on the presence of asbestos on the site and were falsely reassured. Such information is required to be provided with an application. Parties were deprived of their legal participation rights to make a submission on same. It is too late for the applicant to remedy the breach in procedures.
- Should the planning authority have been aware of the amount of asbestos on site its preliminary examination would have been likely to conclude that the proposal was required to undergo a statutory screening for EIA.
- The applicant proposes to reduce the height of the existing party boundary wall substantially. To mitigate the perceived negative effects of the lowering of the wall height the developer should provide a robust netting arrangement along the south and south east boundaries. Should the Board grant permission a condition requiring its provision is recommended.
- The trees in the tree belt are dead or dying and their removal will be required.
- The site is a transitional zone area and should have regard to the context, setting and amenity of existing development.

6.5.3. Paul Daly

Submission by OC+C Architects refers. In addition to reiterating a number of points made in its appeal submission the following are noted:

- The parking is deficient. Other permitted schemes in proximity to public transport provide for a greater parking ratio than that proposed.
- It is incorrect to assume that tenants will not own or want to use cars. It is incorrect to assume that the percentage identified to commute by public transport do not own a car.
- Based on an car ownership rate of 76% in the last census 50 parking spaces should be provided.
- It will lead to increased demand on on-street parking.
- No parking for the retail unit has been provided.
- The historical use of the lane by previous occupants is contested.
- Insufficient weight has been given to the potential traffic flows from future mews developments to the west of No.71A. The proposed access to the parking will impact on same and will lead to conflicting vehicular manoeuvres
- There has been an inconsistent approach taken by the Roads Planning Division to development along the lane.
- The laneway is not 4.6 metres wide along its entire length.
- The conclusions of the appeal response in terms of the daylight and sunlight impacts are not accepted. There is justification for applying a higher duty of care than the minimum standards to a window already compromised by existing structures (window serving living room close to eastern boundary wall). The window only has a VSC of 27.57%. The decrease of approx. 15% will result in a major adverse impact for the living room.
- There could have been some compromise offered through setting back or stepping down the top floors at the western end of the structure.
- The conclusion that the impact on the rear garden would arise from the permitted mews is flawed. With the mews in place 67% of the amenity space

would achieve a minimum of 2 hours daylight. This drops to one third with the development in place. This is unacceptable. The outdoor amenity space of the existing dwelling will be below BRE standards and would have a major negative impact.

- The viewpoints submitted by the applicant are some distance away. The visual impact of the development on adjoining property is not fully represented.
- The context of the proposal, the skyline in the area and the nature and character of adjacent buildings all need to be considered in arriving at an appropriate height.

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Principle of Development and Policy Considerations
- Height and Design
- Amenities of Adjoining Property
- Proposed Apartments – Qualitative Standards
- Site Access and Carparking
- Other Issues
- EIA – Screening
- Appropriate Assessment

7.1. **Principle of Development and Policy Considerations**

Zoning Provisions

- 7.1.1. The site forms part of a terrace of buildings consisting of a mix of commercial and residential uses, a number of which are noted to be vacant. The site comprises of what was originally a cinema and a further two units. It is proposed to demolish

same and replace with a 7 storey (upper two floors recessed) building comprising of a commercial unit at ground floor level and Built to Rent (BTR) apartments above.

- 7.1.2. The site is within an area zoned Z3, the objective for which is to provide for and improve neighbourhood facilities within which both residential and retail are permitted in principle. Notwithstanding, the suitability of the proposal is predicated on other planning considerations being satisfactorily met including protection of amenities of adjoining property, suitability of design, visual impact and traffic considerations. In this regard due cognisance will be had to the development plan provisions in terms of transitional zone areas where the abrupt transitions in scale and use are to be avoided with the avoidance of development that would be detrimental to the amenities of the more environmentally sensitive zones. In this regard I note that the lands immediately to the north, north-west and south-east are zoned Z1, the objective for which is to protect, provide and improve residential amenities, with Clontarf Golf Club which bounds the site to the south zoned Z9, the objective for which is to preserve, provide and improve recreational amenity and open space and green network.

Housing Tenure

- 7.1.3. The proposed development is located within an established, inner suburban area close to the city centre and centres of employment, together with educational, sporting, cultural and commercial facilities. It is also in proximity to high quality public transport with the DART station at Killester and the QBCs on both Howth Road and Malahide Road within walking distance. The proposal would provide for a greater variety in dwelling size and tenure within an area largely characterised by semi-detached and terraced, two storey, family sized owner occupier dwellings. On this basis I am satisfied that this is an appropriate location for such a BTR development and would be in accordance with Policies QH6 and SN1 of the City Development Plan which seek to encourage and foster the creation of attractive mixed-use, sustainable neighbourhoods which contain a variety of housing types and tenures with supporting community facilities, public realm and residential amenities and which contribute to the structure and identity of the city.

Density, Plot Ratio and Site Coverage

- 7.1.4. The proposal comprising of 67 units on a 0.914 hectare site equates to a density of 345 units per hectare. I note that the Dublin City Development Plan sets no upper unit density limit for any zoned lands, including Z3, with each proposal assessed on its own merits. The site is c. 350 metres to the west of Killester DART station and c. 350 metres and 600 metres from the QBCs on the Howth Road and Malahide Roads respectively, both which are to be upgraded under the Bus Connects programme.
- 7.1.5. I have regard to the Council's Core Strategy with respect to housing wherein the intensification and consolidation of the city is promoted. This is to be achieved in a variety of ways including the encouragement of development at higher densities especially in public transport catchments. It is further noted that the development plan policies underpin the creation of a compact city with mixed-use environments, sustainable neighbourhoods and green infrastructure.
- 7.1.6. The Board will be aware of the various statements contained in the National Planning Framework which seeks to provide more compact development including consideration of increased heights, with emphasis on the need to reuse brownfield land, building up infill sites, and redeveloping existing sites. The Framework Plan highlights the need to develop such urban sites, particularly sites in close proximity to city centres and along high-quality public transport routes at more sustainable densities. The need to provide more housing is also reflected in the Rebuilding Ireland Action Plan, the Urban Development and Building Heights and the national Housing Strategy Housing for All. These plans all highlight the need for Planning Authorities to become more proactive and flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights subject to the need to be cognisant of any surrounding sensitive environments be it environmental or historic. The aims are effectively reiterated in the Apartment Guidelines which seek to highlight the need to provide higher density development in central or accessible urban locations and in proximity to public transport corridors and to identify the need to provide more than 30,000 units within Dublin and its suburbs.
- 7.1.7. The development has a plot ratio of 4 which exceeds the development plan parameters of 0.5 - 2.0 for Z3 areas, whilst the site coverage of 100% also exceeds

the development plan parameters of 45%-60%. In terms of the latter I note that the existing site coverage is approx. 55%. There is no question that the site indicators are significantly greater than the indicative parameters set out in the development plan but I note that it allows for the consideration of higher plot ratios and site coverage in certain circumstances including locations adjoining major public transport corridors where an appropriate mix of residential and commercial uses is proposed. On this basis I do not consider that the site indicators, of themselves render the development unacceptable.

- 7.1.8. On the basis of the above, I consider the principle of high density development on the subject site, notwithstanding the fact that it departs from the prevailing density in the immediate area, is appropriate. As noted above the wider, strategic considerations must be balanced against the impact on surrounding residential amenity. These qualitative impacts are assessed in more detail in my assessment below.

7.2. Height and Design

- 7.2.1. The application is accompanied by an Architectural Design Statement, Landscape and Townscape Visual Assessment Report and photomontages in which the rationale for the design, layout and scale of the proposed development is set out.
- 7.2.2. As noted, the site forms part of what is a neighbourhood centre providing for a limited level of services including a pharmacy, doctor's surgery and beauty services with residential over. Half of the ground floor units are currently vacant. The overall terrace is at the end of a line of houses with open space associated with Clontarf Golf Club and the DART rail line providing a break to the south.
- 7.2.3. The site is approx. 400 metres to the north-west of Killester village centre which provides for a range of retail and commercial services. Collins Avenue East is c. 22 metres wide (inclusive of footpaths) and is relatively well trafficked linking Donnycarney and Malahide Road to the west with Killester and Howth Road to the south-east.
- 7.2.4. The City Development Plan states that in all cases, proposals for taller buildings must respect their context and address the assessment criteria set out in Section 16.7 of the Plan. I am also cognisant of the Urban Development and Building

Heights, Guidelines for Planning Authorities (2018) which supersedes the development plan which sets out the requirements for considering increased building height in various locations. I also have regard to the criteria which a development is required to satisfy as set out in Section 3.2 of the guidelines.

- 7.2.5. The development plan allows for consideration of a building (commercial and residential) up to 24 metres due to the site's location within 500 metres of Killester DART station. The proposal, entailing a 7 storey building with an overall height of 22.50 metres, does not exceed this cap.
- 7.2.6. The building is bookmarked by the remaining terraced buildings. Whilst the applicant does not have any legal interest in the remaining units within the terrace it has provided indicative plans by way of further information as to how any future redevelopment, both as an extension to the proposed scheme and independent of same, could be realised. Whilst any future redevelopment would not be bound by the proposals, they are useful in demonstrating that the proposed development would not prejudice their development potential.
- 7.2.7. The design rationale is considered acceptable in principle at this location. The upper two floors are recessed from the front elevation onto Collins Avenue East with the tallest elements to the south availing of the undeveloped aspect and views across Clontarf Golf course. Certainly were the trees along the boundary within the golf course grounds be removed the scheme would be largely unscreened from the course. However this, of itself, is not a major issue. No views or prospects are protected in the vicinity.
- 7.2.8. I concur with the view that the series of recessed balconies on the front elevation visually breaks down the massing and length of the building. The blank gable ends have been modulated to incorporate inset features to break up their overall appearance and expanse. As noted previously the southern elevation avails of the open aspect provided by the golf course.
- 7.2.9. The building would feature a palette of finishes, primarily comprising of two brick types, metal balustrades and rainscreen cladding to the penthouse external walls. I submit that the contrast from the red brick finish of the remainder of the terrace and the dwellings to the north-west is appropriate. The detailing and materials are

generally durable and of a high standard, and the final detail of materials, can be addressed via condition in the event of a grant of permission for the development.

7.2.10. I submit that it is not a reasonable expectation that there would be no material change in the overall size, scale and bulk of any development on the subject site having regard to the National Guidelines and the site's locational characteristics. I am of the opinion that the scale, mass and height proposed are appropriate and the proposal puts forward a quality architectural response to the site and its specific characteristics. Whilst it will be visible primarily within the local context, I do not consider this to be a negative. Its height is such that it will not be visible from the wider area.

7.2.11. In terms of overbearance, it is acknowledged that the proposed development will alter the relationship between the residential units remaining within the terrace and the dwellings to the north-east and north. However, it is my view that the overall impact would be acceptable, and this issue is dealt with in more detail in the subsequent section below.

7.3. Amenities of Adjoining Property

Residential Amenities

7.3.1. The Daylight and Sunlight Assessment assesses the impact of the development on adjoining properties. The document was amended by way of further information to allow for an assessment of the potential development of the remainder of the terrace.

7.3.2. The assessment of daylight, sunlight and overshadowing relies on the standards in the following documents:

- BRE Report "Site Layout Planning for Daylight and Sunlight;" and
- British Standard BS 8206-2:2008 Lighting for Buildings – Part 2 Code of Practice for Daylighting.

I have considered the reports submitted by the applicant and have had regard to BRE 2009 – Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings - Code of practice for daylighting). I note and acknowledge the publication of the updated British Standard (BS EN 17037:2018 'Daylight in Buildings), which replaced the 2008

BS in May 2019 (in the UK) but that this updated guidance does not have a material bearing on the outcome of the assessment and that the relevant guidance documents remain those as referenced.

- 7.3.3. As noted in section 1.6 of the BRE document the detail is advisory, it is not mandatory. Although it gives numerical guidelines it recommends that they be interpreted flexibly since natural lighting is only one of many factors in site layout design.

Daylight

- 7.3.4. In term of daylight paragraph 2.2.7 of the BRE Guidance notes that for existing windows, if the VSC (vertical sky component) is greater than 27% then enough skylight should be reaching the window of the existing building. 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 will notice a reduction in daylight.
- 7.3.5. I consider that the assessment provided complies with best practice in terms of the locations tested based on guideline recommendations for the closest façades which have windows with potential for impact. The amended document submitted by way of further information assesses the impact with the potential redevelopment of the entire terrace based on the indicative plans drawn up. This has been supplemented by a further report which accompanies the appeal response with regard had to the windows in the gable elevation of No. 71 Collins Avenue East to the west.
- 7.3.6. In terms of the residential units in the terrace immediately to the east and west (Nos. 57, 59, 61 and 69) the habitable windows assessed record a minor reduction to the available daylight. All but 1 window (that serving a bedroom in No.61) have a VSC greater than 27% and not breaching 0.8 times its former limit value. BRE states that where the loss of skylight or sunlight does not meet the guidelines the impact is assessed as minor, moderate or major adverse. Factors tending towards a minor adverse impact include only a small number of windows being affected as is the case in this instance. Invariably the potential redevelopment of the remainder of the terrace would result in their demolition and replacement.
- 7.3.7. In terms of the properties on the opposite side of Collins Avenue East (Nos. 54, 56, 58 and 60) all windows assessed against the proposed development show that

whilst a number record a minor reduction to the available daylight the VSC is greater than 27% or not breaching 0.8 times its former limit value for habitable rooms as per the recommendations. This would remain the case should the remainder of the terrace be redeveloped as per the indicative plans prepared.

- 7.3.8. The appeal response refers specifically to No. 71 which has a window serving a habitable room in the side elevation. The said window is in close proximity to the boundary wall onto the lane. The two windows at 1st floor level have obscure glazing suggesting they serve two bathrooms. The assessment also has regard to the potential overall redevelopment of the terrace. As per section 4.2 of the report accompanying the appeal the window in the gable serving the sitting room has an existing VSC component of 27.57%. With the development in place this would reduce to 23.37% but will not breach the 80% of its former value. The windows to the rear elevation were also assessed and meet the stated criteria.

Sunlight

- 7.3.9. The impact on sunlight to windows is generally examined by way of assessing the effect of the development on the Annual Probable Sunlight Hours (APSH). All windows retain an APSH in excess of 25% and the majority retain a winter PSH in excess of 5%. 2 no. windows in Nos 54 and 56 on the opposite side of the road do not meet the winter sunlight hours but these do not meet the recommendations at present and effectively have no winter sunlight hours. Should the indicative plans for the remainder of the terrace be realised all windows would retain an APSH in excess of 25% with the majority retaining a winter PSH in excess of 5% although an additional impact would be noted to available sunlight in the winter period to Nos. 54 and 56.
- 7.3.10. All windows in No.71 to the north-west would retain an APSH of in excess of 25%.

Overshadowing

- 7.3.11. In relation to overshadowing the BRE guidelines states that an acceptable condition is where external amenity areas retain a minimum of 2 hours of sunlight over 50% of the area on the 21st March.
- 7.3.12. Table 3.2 of the study sets out the predicted impact of the development in tabular form with shadow casting diagrams provided in support. Further details in terms of the front gardens and driveways to the dwellings on the opposite side of the road is

provided in the appeal response. As noted from the shadow diagrams overshadowing of same would arise in the mid to late afternoon on 21st March.

7.3.13. In terms of the properties within the terrace their rear amenity spaces all meet the above requirements.

7.3.14. In assessing No.71 the appeal submission has regard to the proposed dwelling which has secured permission under ref. 308464-20 (WEB 1351/20) to the rear with access from the lane. I refer the Board to Table 9 and Figure 5 of the Sunlight and Daylight Assessment. Without the mews development in place 85.3% of the garden receives 2 hours sunlight on 21st March. With the mew development in place 66.7% of the reduced garden area would receive 2 hours of sunlight. With the development in place this reduces to 45.3% which is below the target value of 50% and is less than 80% of its existing target. The private amenity space of the mews development, itself, would only see a marginal decrease from 69.4% to 68% and will meet the relevant criteria. Having regard to the reduction in the rear garden arising from the permitted mews development and the noticeable impact the said permitted mews development would have same I consider that the reduction arising from the proposed development would not be to an extent as to warrant a refusal of permission.

Overlooking and Loss of Privacy

Overall the scheme as amended by way of further information has been designed as far as possible to avoid overlooking of adjoining property. Notwithstanding, a number of amendments are required to protect the amenities of said adjoining property including the residential units within the terrace to either side and No.71 to the north-west. The amendments recommended are:

- 1.8 metre high opaque glazed screens shall be fitted to the north-western side of balconies serving apartment numbers 2.08, 3.08, 4.08, 5.05 and 6.01 and the south-eastern side of balconies serving apartment numbers 2.14, 3.14, 4.14, 5.10 and 6.03.
- 1.8 metre high opaque treatment or an external re-directional louvre treatment to be fitted to the north western window openings to apartment numbers 2.08, 3.08, 4.08, 5.01, 5.05 and 6.01 and south-eastern window

opening to the living/dining/kitchen room in apartment numbers 2.14, 3.13, 4.14, and 5.10

- The south-eastern elevation to apartment 6.03 to be amended with windows redirected to face south similar to that proposed for apartment 5.10.

I do not consider that overlooking is a material matter for the properties on the opposite side of the road on the basis of their orientation onto the public realm where views into the properties are available from the road and footpaths.

Overbearance

- 7.3.15. As noted above the proposal will be 22.50 metres in height with the upper two floors recessed from the elevation onto Collins Avenue East. Certainly the proposed development would be visible from the adjoining properties to the north and east/north-east and will change the outlook from these properties. I consider that the extent of visual change would be in character with the constantly evolving and restructuring urban landscape and would not adversely impact on the residential amenities of the properties as to warrant a refusal of permission.

Clontarf Golf Club

- 7.3.16. The golf course bounds the site to the south. A boundary wall backed with trees within the golf course grounds delineate the boundary. The condition and health of the trees is contested. Notwithstanding, the applicant has no legal interest over the said trees which are not listed for preservation and their potential removal or retention is the prerogative of the golf course owner. Certainly their removal would result in the scheme being more visible from the course but this, of itself, is not such a material concern as to warrant a refusal of permission.
- 7.3.17. In terms of safety and issues arising from errant golf balls both parties have submitted reports from appropriately qualified persons addressing this matter in which there is no consensus. Certainly, the existing trees provide for a level of protection which would be removed should the trees be felled. Notwithstanding, I would subscribe to the view that it is the golf club's responsibility to ensure the safety of adjoining lands.

Impact on Amenities of Adjoining Property – Conclusion

- 7.3.18. In conclusion, sufficient information has been provided with the application and appeal to allow for a comprehensive and thorough assessment of the impacts of the proposal on neighbouring residential amenities as well as the wider area. I submit that the impacts identified must be balanced against the need to develop infill sites at higher and more sustainable densities in accordance with nationally adopted strategies. Such strategies obviously have the potential to increase levels of overshadowing on adjoining property. I submit that the increased overshadowing that would arise is acceptable in allowing for the development of the site and that the proposal would not have excessively overbearing impacts when viewed from the adjoining residential property to justify a refusal of permission.
- 7.3.19. Having regard to the assessment and conclusions set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the enjoyment or value of property in the vicinity. Accordingly, the proposed development would comply with the zoning objective for these lands, as contained in the development plan and the proposed development should not be refused for reasons relating to impacts on neighbouring amenities.

7.4. Proposed Apartments – Qualitative Standards

- 7.4.1. SPPR 7 and SPPR 8 of the Design Standards for New Apartments specifically refer to Build to Rent Schemes (BTR). SPPR 8 states that there are no restrictions on dwelling mix with flexibility to be applied in relation to the provision of a proportion of the storage and private amenity space associated with individual units and in relation to the provision of communal open space, on the basis of the provision of alternative, compensatory communal support facilities and amenities.
- 7.4.2. The scheme provides for 67 units as follows:
- 33 no. 1 bedroom units (49%)
 - 34 no. 2 bedroom (51%)
- 7.4.3. All units meet the minimum floor space requirements as set out in SPPR 3. 44 units are dual aspect equating to 65% of the total provision which exceeds the 33%

minimum requirements of SPPR 4. The minimum floor to ceiling heights comply with the requirements of SPPR 5. The number of units per floor per core as required by SPPR6 does not apply to BTR schemes. I note that each unit provides for the minimum storage requirements set out in Appendix 1. Each unit is served by a balcony, all which meet the minimum requirements as set out in Appendix 1.

7.4.4. In terms of communal open space 153 sq.m. internal amenity space directly adjacent to 561 sq.m. south facing external space at podium level are proposed and provide for reasonable amenity values. The internal space provides for shared workspace, games and media rooms. The external space exceeds the minimum requirements set out in Appendix 1 of the guidelines which would require 403 sq.m. for the scheme.

7.4.5. In terms of daylight and sunlight to the proposed units the BRE Guidance with reference to BS8206 – Part 2 sets minimum values for ADF that should be achieved. These are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Section 2.1.14 of the BRE Guidelines notes that non-daylight internal kitchens should be avoided where possible, especially if the kitchen is used as a dining area too. If the layout means that a small, internal galley-type kitchen is inevitable, it should be directly linked to a well daylighted living room. This guidance does not give any advice on the targets to be achieved within a combined kitchen/living/dining layout. It does however, state that where a room serves a dual purpose the higher ADF value should be applied.

7.4.6. The proposed apartment layouts include a kitchen/living/dining room. As these rooms serve more than one function the 2% ADF should be applied.

7.4.7. As noted previously the application is accompanied by a Daylight and Sunlight Assessment Report. I am satisfied as to the veracity of the results in so far as is practical and that the units assessed within the study represent the worst case scenario. All of the units meet the minimum requirements as detailed above.

7.4.8. The further information response notes that the BS 8206-2 does not give guidance on the potential effect of trees but that if the recommended value of ADF are exceeded in both summer and winter the daylight would be considered adequate. The response states that the trees along the southern boundary within the grounds of Clontarf golf club were modelled with geometry representing the height and

canopy width in accordance with the tree survey undertaken. The geometry was set to opaque with the reflectance set to 10% to simulate dark green leaf. The units were assessed with the trees in place with the results set out in Table 5 of the further information report. All rooms exceed the target ADF values even without applying a transparency factor to the canopy.

- 7.4.9. Reference is made in the appeal by Clontarf Golf and Bowling Club to EN 17037:2018 which is a unified daylighting standard in which the compliance calculations are based on an annual climate-based simulation of interior illuminance distributions. Appendices A and B of the Daylight and Sunlight Assessment report submitted with the appeal response set out the results from the application of the said standards. with 100% of the rooms meeting the Target and Minimum illuminance levels with all rooms exceeding the minimum and target values set out in the document for daylight provision.
- 7.4.10. As modelled the amenity space along the southern boundary will meet the BRE requirements in terms of sunlight.
- 7.4.11. Certain amendments entailing opaque screens between balconies and use of opaque glazing in certain windows so as to preclude the potential for overlooking between units are recommended and can be addressed by way of condition.

Qualitative Standards - Conclusions

- 7.4.12. On balance, I consider that the proposed development would provide for an adequate level of amenity of prospective occupants and would comply with the SPPR's of the Apartment Guidelines.

7.5. Site Access and Carparking

- 7.5.1. The application is accompanied by a Transport Assessment Report which includes a Preliminary Mobility Management Plan. The agent for the applicant has confirmed that the traffic survey undertaken in 2021 to inform the report was when schools were open, with covid factors applied to reflect non-covid times based on local TII Traffic Counter data from the adjacent N1.
- 7.5.2. As per SPPR8 (iii) there shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central

locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures. Section 4.20 sets out the said suitable locations and include those within 10 minutes walking distance of a DART or Luas stop or within 5 minutes walking distance of high frequency (10 minute peak hour frequency) bus services.

- 7.5.3. The site, within walking distance of the DART station at Killester and the QBCs on both Malahide and Howth Roads, can be seen to accord with the above parameters. I note the QBC routes are to be upgraded as part of the Bus Connects programme. In addition, the 104 bus route passes the site with a bus stop directly outside. I consider that the site can be considered to comply with the above requirements and is a suitable location for limited parking provision. 24 parking spaces to serve the 67 units is proposed equating to a ratio of 0.36 per apartment. I note 156 no. bicycle parking are to be provided within the scheme. This is considered acceptable and to accord with the said policy provisions.
- 7.5.4. The car parking is to be provided at basement level to be accessed from the rear via the lanes. The lanes are in the region of 4.6 metres wide with a number of pinch points which fall below this. The lanes are also served by footpaths along part. The historical use of the lanes is given in support of the application. 3rd parties contest the figures given as to the vehicular movements generated by the previous occupiers including a Cash in Transit Depot but are defended by the applicant. Notwithstanding, a 5 day survey of both lanes was undertaken with low traffic movements recorded.
- 7.5.5. It is proposed that access would be gained via the western access lane and exit via the eastern access lane thereby operating a one-way system. As calculated, there would be in the region of 17 two way movements generated by the development in the AM peak with 18 in the PM peak.
- 7.5.6. In the context of the limited vehicular movements that would be generated by the proposal arising from the limited car parking to be provided I consider that the lanes can accommodate same including the potential for two way movements including that from the permitted mews development to the rear of No.71 which is to be accessed from the lane. I would concur with the applicant's view that there would be

intervisibility between vehicles at either end. I note that the Transportation Planning Division of the city council has no objection to the proposal. Parking along the lane was noted on day of inspection. It is a public laneway and the implementation of double yellow lines would address same. I note that the pay and display parking spaces to the front of the site are to be retained.

7.6. Other Issues

Ecology

- 7.6.1. A bat survey accompanies the application. No bats or bat roosts were observed in the buildings to be demolished. A single Common Pipstrelle was observed foraging near the trees within the Clontarf golf club grounds to the south. The said trees will not be impacted by the proposed development. As noted in the appropriate assessment screening in section 7.7 below bats are not a qualifying interest of the designated sites assessed.

Flood Risk

- 7.6.2. A Flood Risk Assessment was included in the Engineering Services Report accompanying the application (section 5). Due regard is had to the Wad Flood Alleviation Scheme completed in 2014. The 2nd stage works involving a tunnel under the Howth Road and improved outlet to the sea at Clontarf are at preliminary design stage. The proposed development will not have a negative impact on the scheme as completed and proposed due to the proposed drainage measures to be incorporated including SuDS, attenuation for 100 year storm + 20" allowance for climate change and reduced surface water outfalls with discharges restricted to greenfield run off.

Construction and Demolition

- 7.6.3. A roof survey was submitted with the appeal response with asbestos found to be present. This is not an unusual scenario in buildings of this vintage in such urban infill sites. Its removal is regulated by other legislative codes to which the developer will be required to comply with.
- 7.6.4. Details of the proposed foundations are provided with the appeal response and are anticipated to be of shallow form consistent of pad foundation and strip footings. It is proposed to offset foundations back from any shared boundary abutting

neighbouring structures. The proposed foundation levels are to be confirmed following detailed site investigations to be commenced following demolition of the structures on site.

- 7.6.5. The application is accompanied by an Outline Construction and Environmental Management Plan in addition to a Preliminary Construction and Operational Waste Management Plan. Finalised versions of such documents would be required by way of condition reflecting established practice.

Procedural

- 7.6.6. As per the provisions of Article 32 8(b) of the Planning and Development Act, 2000, as amended, it falls to the planning authority to determine whether further information contains significant additional data which requires further public notices. The planning authority in exercising its judgement determined it was not necessary to seek revised public notices. It is clear that local residents were aware of the application and engaged in the process by making their views known through written submissions to the Planning Authority in the first instance and to the Board at this appeal stage.

7.7. EIA – Screening

- 7.7.1. The development subject of this application falls within the class of development described in 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising over 500 dwelling units or over 10 hectares in size or 2 hectares if the site is regarded as being within a business district.
- 7.7.2. The number of dwelling units proposed at 65 is well below the threshold of 500 dwelling units noted above. With a site area of 0.194 hectares, located in the northern suburbs of Dublin City, it is materially below the applicable threshold of 10 hectares.
- 7.7.3. The site is zoned Z3 - neighbourhood facilities in the current Dublin City Development Plan in which residential is permitted in principle. The site comprises of a number of buildings in a terrace providing for a mix of commercial and residential uses. There are mix of uses in the vicinity including Clontarf golf club to the south, mature residential to the north, east and west with Killester village centre

to the south-east. The buildings to be demolished are not protected structures and the site is not with a conservation area or architectural conservation area. The proposed development will not have an adverse impact in environmental terms on surrounding land uses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. The presence of asbestos on the site is noted and its removal will be governed by other legislative codes. A Roof Inspection Report was submitted with the appeal response. It would not give rise to a risk of major accidents or risks to human health. The site is not within a European site. The issues arising from the proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive. The application is accompanied by Architectural Design and Townscape Statements and a Transport Assessment and Mobility Management Plan. These address the issues arising in terms of the sensitivities in the area.

7.7.4. Having regard to

- the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the site on lands within the northern suburbs of Dublin City on lands zoned for neighbourhood uses under the provisions of the Dublin City Development Plan 2016 and the results of the strategic environmental assessment of the Dublin City Development Plan, undertaken in accordance with the SEA Directive (2001/42/EC).
- the location of the site which is served by public infrastructure, and the existing pattern of development in the area.
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development,” issued by the Department of the Environment, Heritage and Local Government (2003),
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

7.7.5. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report was not necessary.

7.8. **Appropriate Assessment**

Compliance with Article 6(3) of the Habitats Directive

7.8.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

7.8.2. The application is accompanied by AA Screening Report prepared by Bryan Deegan of Altemar Ltd. dated 8th June 2021. It was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development.

7.8.3. The report concluded that the development would not give rise to any significant effects to designated sites.

7.8.4. Having reviewed the documents and submissions I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Screening for Appropriate Assessment- Test of likely significant effects

7.8.5. The project is not directly connected with or necessary to the management of a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s).

7.8.6. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

- 7.8.7. The applicant provides a description of the project on page 4 of screening report. In summary, the development comprises demolition of existing buildings and construction of a mixed use development comprising of retail and 67 BTR residential units. The scheme is to connect into public sewerage and water supply.
- 7.8.8. The site comprises an existing developed site on Collins Avenue East.

Submissions and Observations

- 7.8.9. Appellants raise the issue of failure to reference the Wad River Flood Alleviation Scheme Phase which has yet to be carried out. The issue of foraging bats in proximity is also raised.

European Sites

- 7.8.10. The development site is not located in or immediately adjacent to a European site. Table 1 of the AA Screening Report sets out the 16 sites within 15km radius of the site. The qualifying interests for all 16 sites are set out in Table 2 of the Screening report and are available on npws.ie. Whilst detailed conservation objectives have been drawn up for some sites generic conservation objectives apply to others. The overall aim is to maintain or restore the favourable conservation condition of the identified qualifying interests.
- 7.8.11. The designated within the inner section of Dublin Bay, namely South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA are proximate to the outfall location of the Ringsend WWTP and could, therefore, reasonably be considered to be within the downstream receiving environment of the proposed development and on this basis these sites are subject to a more detailed Screening Assessment.
- 7.8.12. I am satisfied that the potential for impacts on all other Natura 2000 Sites can be excluded at the preliminary stage due to the separation distances between the European sites and the proposed development site, the nature and scale of the proposed development, the absence of relevant qualifying interests in the vicinity of the works, the absence of ecological and hydrological pathways and to the conservation objectives of the designated sites.

South Dublin Bay and River Tolka Estuary SPA (004024) - c.1.2 km from the subject site

Conservation Objectives – To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

Qualifying Interests/Species of Conservation Interest: Light-bellied Brent Goose / Oystercatcher / Ringed Plover / Grey Plover / Knot / Sanderling / Dunlin / Bar-tailed Godwit / Redshank / Black-headed Gull / Roseate Tern / Common Tern / Arctic Tern/ Wetland and Waterbirds [A999]

North Dublin Bay SAC (000206) – c. 2.2km from the subject site

Conservation Objectives - To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

Qualifying Interests/Species of Conservation Interest: Mudflats and sandflats not covered by seawater at low tide / Annual vegetation of drift lines / Salicornia and other annuals colonising mud and sand / Atlantic salt meadows / Mediterranean salt meadows / Embryonic shifting dunes / Shifting dunes along the shoreline with *Ammophila arenaria* [2120] / Fixed coastal dunes with herbaceous vegetation (grey dunes) / Humid dune slacks [2190] / Petalwort

North Bull Island SPA (site code 004006) - c. 2.2km from the subject site.

Conservation Objectives – To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA

Qualifying Interests/Species of Conservation Interest: Light-bellied Brent Goose / Shelduck / Teal / Pintail / Shoveler / Oystercatcher / Golden Plover / Grey Plover / Knot / Sanderling / Dunlin / Black-tailed Godwit / Bar-tailed Godwit / Curlew / Redshank / Turnstone / Black-headed Gull / Wetland and Waterbirds

South Dublin Bay SAC (site code 000210) - c. 3.9 km from the subject site.

Conservation Objectives - To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

Qualifying Interests/Species of Conservation Interest: Mudflats and sandflats not covered by seawater at low tide / Annual vegetation of drift lines / Salicornia and other annuals colonising mud and sand / Embryonic shifting dunes

7.8.13. Identification of Likely Effects

- There is nothing unique or particularly challenging about the proposed urban development, either at construction phase or operational phase.
- There are no watercourses in the vicinity of the site.
- Surface water from the proposed development would discharge to the public network.
- During the construction phase, standard pollution control measures would be put in place. These measures are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites. In the event that the pollution control and surface water treatment measures were not implemented or failed I am satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in Dublin Bay from surface water runoff can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the application site from Natura 2000 sites in Dublin Bay (dilution factor).
- The scheme includes attenuation measures which would have a positive impact on drainage from the subject site. SUDS are standard measures which are included in all projects and are not included to reduce or avoid any effect on a designated site. The inclusion of SUDS is considered to be in accordance with the Greater Dublin Strategic Drainage Study (GDSDS) and are not mitigation measures in the context of Appropriate Assessment.

- The implementation of SuDS measures on site will improve the potential flooding of the River Wad which is an improvement of the current situation on site. No in combination effects are foreseen from the Wad Flood Alleviation Scheme.
- The site is to connect to the existing public sewer and water supply. The foul discharge from the proposed development would drain, via the public network, to the Ringsend Waste Water Treatment Plant. It is noted that Ringsend WWTP is currently working at or beyond its design capacity. The subject site is identified for development through the land use policies of the Dublin City Development Plan. This statutory plan was adopted in 2016 and was subject to AA by the planning authority, which concluded that its implementation would not result in significant adverse effects to the integrity of any Natura 2000 areas. I also note the development is located in the urban area on serviced lands and the proposal will not generate significant demands on the existing municipal sewers for foul water and surface water. Furthermore, I note upgrade works have commenced on the Ringsend Wastewater Treatment works extension permitted under ABP – PL.29N.YA0010 and the facility is subject to EPA licencing (D0034-01) and associated Appropriate Assessment Screening. It is my view that the foul discharge from the site would be insignificant in the context of the overall licenced discharge at Ringsend WWTP, and thus its impact on the overall discharge would be negligible. It is also noted that the planning authority and Irish Water raised no concerns in relation to the proposed development.
- The site is within an existing urban area, is developed and does not support habitats of ex-situ ecological value for the qualifying interest species of the SPAs. On the basis of the foregoing and the separation distance, the potential for significant impacts on waterbirds that are qualifying species of the European Sites due to disturbance / displacement can be screened out.

Bats are not a qualifying interest of any of the European sites.

In combination effects

7.8.14. In combination effects takes into consideration a number of projects in the vicinity. It concludes that there will not be any in combination effects on the European site discussed.

Mitigation Measures

7.8.15. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

Screening Determination

7.8.16. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually or in combination with other plans or projects, would not be likely to give rise to significant effects on European Site Nos. 004024, 000206, 004006 and 000210 or any other European site, in view of the site's Conservation Objectives and Appropriate Assessment (and submission of a NIS) is not, therefore, required.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to:

- (a) the Z3 zoning objective for the area in the current Dublin City Development Plan, the objective for which is to provide for and improve neighbourhood facilities within which both residential and retail are permitted in principle,
- (b) The National Planning Framework issued by the Department of Housing Planning and Local Government according to which new residential development in cities should be directed into locations within the existing built-up serviced areas,
- (c) Sustainable Urban Housing: Design Standards for New Apartments: Guidelines for Planning Authorities, issued by the Department of Housing, Planning and Local Government in March, 2018 in section 5 of which provision is made for purpose-built residential accommodation and associated amenities built specifically for long term rental that is managed and serviced in an institutional manner by an institutional landlord,
- (d) the design, form, height, materials and finishes of the proposed development, the internal layout of the proposed residential units, and access to light, aspect and private open space provision. The extent and range of communal internal and external facilities and amenities available to residents and the established pattern and character of existing development in the area, and
- (e) the location within a well serviced, inner suburban area in close proximity to the city centre, public transport facilities and a good local road network, and a wide range of community and social facilities,

it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with national strategic policy and local development policies and objectives for the area, as set out in the current Development Plan for the area, would not seriously injure the visual or residential amenities of the area, would not adversely affect the amenities of adjoining property and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged by the application, as amended by the plans and particulars received by the planning authority on the 14th 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 the 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 67 no. build to rent units hereby permitted shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

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

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

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

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

5. The development shall be amended as follows:

(a) All balconies on the front elevation facing onto Collins Avenue East shall be fitted with opaque glazing.

(b) 1.8 metre high opaque glazed screens shall be fitted to:

- Dividing screens between adjoining balconies or patios,
- The north-western side of balconies serving apartment numbers 2.08, 3.08, 4.08, 5.06 and 6.01,
- The south-eastern side of balconies serving apartment numbers 2.14, 3.14, 4.14, 5.10 and 6.03.

(c) 1.8 metre high opaque treatment or an external redirectional louvre treatment shall be fitted to:

- The south-eastern window to bedroom in apartments numbers 2.09, 3.09, 4.09 and 5.06,
- The south-eastern window opening to the living/dining/kitchen room in apartment numbers 2.14, 3.14, 4.14, 5.04 and 5.10,
- The north western window openings to apartment numbers 5.01, 5.05 and 6.01,

(d) The south-eastern elevation to apartment 6.03 shall be amended with windows redirected to face south similar to that proposed for apartment 5.10.

Revised plans with the necessary alterations shown thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interests of residential amenity.

6. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme.

Reason: In the interests of amenity.

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

Reason: In the interest of visual amenity.

8. Details of the proposed occupant of the ground floor retail unit shall be submitted to the planning authority for written agreement prior to occupation.

Reason: In the interest of clarity.

9. The proposed shopfront shall be in accordance with the following requirements:

(a) Signs shall be restricted to a single fascia sign in hand-painted lettering or individually mounted lettering.

- (b) Lighting of the fascia and shopfront shall be by means of external illumination only.
- (c) Notwithstanding the provisions of the Planning and Development Regulations, 2001 or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building, unless authorised by a further grant of planning permission.
- (d) No adhesive material shall be affixed to the windows or the shopfront.
- (e) An external roller shutter shall not be erected, any internal shutter shall be only of the perforated type, coloured to match the shopfront colour.

Reason: In the interest of visual amenity.

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

Reason: In the interests of visual and residential amenities.

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

Reason: In the interests of visual and residential amenity.

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

Reason: In the interest of public health.

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

Reason: In the interest of orderly development.

14. A minimum of 10% of all car parking spaces should be provided with electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points or stations at a later date.

Reason: To provide for and future proof the development such as would facilitate the use of electric vehicles.

15. 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: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

16. 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.

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

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

18. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

19. Prior to commencement of development on site, the developer shall submit, for the written agreement of the Planning Authority, details of the Management Company, established to manage the operation of the development together with a detailed and comprehensive Build-to-Rent Management Plan which demonstrates clearly how the proposed Build-to-Rent scheme will operate.

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

20. 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.

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

other prospective party to the agreement to An Bord Pleanála for determination.

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

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Senior Planning Inspector

April, 2022