



An  
Bord  
Pleanála

# S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016

## Inspector's Report ABP-312268-21

---

### Strategic Housing Development

134 Build to Rent apartments,  
retail/commercial unit and associated  
site works

### Location

Site bounded by Newmarket Square  
to the North, Ardee Street to the west  
and Mill Street to the south including  
City House and Unit 3, Newmarket,  
Dublin 8.

### Planning Authority

Dublin City Council South

### Applicant

Nrek1 Limited

### Prescribed Bodies

1. Irish Water
2. Transport Infrastructure Ireland

### Observer(s)

1. Cllr Máire Devine
2. John Conway and the Louth  
Environmental Group (BKC  
Solicitors)

**Date of Site Inspection**

9<sup>th</sup> August 2022

**Inspector**

Daire McDevitt

## Contents

|   |     |
|---|-----|
| 1.0 Introduction .....                              | 4   |
| 2.0 Site Location and Description .....             | 4   |
| 3.0 Proposed Strategic Housing Development .....    | 5   |
| 4.0 Planning History.....                           | 8   |
| 5.0 Section 5 Pre Application Consultation .....    | 10  |
| 6.0 Policy Context.....                             | 13  |
| 7.0 Observer Submissions.....                       | 24  |
| 8.0 Planning Authority Submission .....             | 30  |
| 9.0 Prescribed Bodies.....                          | 42  |
| 10.0 Planning Assessment.....                       | 43  |
| 11.0 Environmental Impact Assessment Screening..... | 95  |
| 12.0 Appropriate Assessment Screening .....         | 94  |
| 13.0 Recommendation.....                            | 108 |
| 14.0 Reasons and Considerations.....                | 108 |
| 15.0 Recommended Board Order.....                   | 109 |

**Appendix 1 List of documentation submitted with the application**  
**Appendix 2 EIA Screening Determination Form**

## 1.0 Introduction

This is an assessment of a proposed strategic housing development submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

## 2.0 Site Location and Description

The site, with a state nett area of 0.32 hectares, is located at Newmarket, Dublin 8, within the Liberties area of Dublin City and c.1.7km south-west of O'Connell Street bridge. The site is c.150m south of St Lukes Avenue / Cork Street and c.420m to the west of New Street South, being two of the main arterial routes into the city centre.

The area has a mixed character and is the subject of extensive redevelopment at present. The application site is currently occupied by several buildings (built c.1970/1980), including the 'City House' office building and Unit 3, Newmarket, which previously accommodated the Liberty Church. The wider area is characterised by 2 storey residential housing estates to the southwest and west, with mixed urban development at a higher scale taking place to the north and east of the site. To the east is the Teelings Distillery, an ESB substation and the Dublin Liberties Distillery, all characterised by industrial style buildings of an equivalent of 2-3 storeys in height.

The application site is bounded by public footpaths and roads to the north (Newmarket Square), west (Ardee Street) and south (Mill Street), with an office development 'The Eight Building' forming the eastern boundary. A Part VIII project for the upgrade of Newmarket Square has been agreed by Dublin City Council. The red line boundary includes portions of the public roads and footpaths along Newmaket Square, Ardee Street and Mill Street and 2 no. associated junctions within the control of DCC. A letter of consent from DCC for the inclusion of these lands, to facilitate proposals for local upgrade works to the public realm is provided with the application documentation.

A conservation area overlaps the site for Newmarket Square to the north, and there are protected structures in the vicinity of the site on Newmarket and Mill Street.

The site is located within the zone of archaeological potential for Recorded Monument and Place (RMP) DU018-040 (burial ground). Further, the site is within a site of archaeological interest as defined in the Dublin City Development Plan 2016-22.

The site is located within the Strategic Development and Regeneration Area (SDRA) 16, Liberties and Newmarket Square.

### 3.0 Proposed Strategic Housing Development

The proposed development comprises the demolition of existing buildings on site and the construction of a 6-9 storey mixed use building with frontage onto Newmarket Square to the north, Ardee Street to the west and Mill Street to the south. The proposed building has a maximum height of 31.3m and contains the following:

- 134 no. Build-To-Rent (BTR) apartment dwellings, comprising 1 no. studio unit, 96 no. 1 bed units, 7 no. 2 bed (3 person) units and 30 no. 2 bed (4 person) units. The proposed apartments are primarily provided from first to eight floor level (132 no. units) with the exception of 2 no. units that are provided at ground floor level fronting onto Ardee Street.
- 314 sqm of private amenity space for the BTR units is provided in the form of balconies on all elevations (53 no. balconies), together with terraces to 2 no. ground floor units and 2 no. units at the 7th floor;
- 1,131 sqm of external communal amenity space for future residents is provided in the form of a podium level communal courtyard (330sqm) and 5 no. communal garden terraces at roof level (total of 801sqm), incorporating associated landscaping, external lighting and seating areas.
- 115.7 sqm of internal communal amenity space for future residents is provided at ground floor level, including a co-working area (60.6sqm) and a games room (55.1sqm).
- The main resident access to the BTR units is provided via a foyer (50 sqm) at ground floor level, incorporating a reception desk and management/maintenance office area. Ancillary services for BTR residents at ground floor level include a refuse storage area (58.3 sqm) and a bicycle storage area (184.4 sqm) accommodating 238 no. resident/visitor bicycle spaces and 2 no. spaces for cargo bikes. Additional external access to the bike and bin storage areas is provided via doors onto Mill Street.
- 606.1 sqm Gross Floor Area (GFA) of ground floor level commercial/retail space is proposed, with direct frontage onto Newmarket Square and at the corner of Newmarket Square and Ardee Street. The commercial/retail unit includes a dedicated refuse storage area (27.9 sqm) and a bike storage area (7.7 sqm) accommodating 8 no. spaces. Additional external access to the bike and bin storage areas is provided via doors onto Newmarket Square.
- The ground floor level also incorporates ancillary infrastructure/services for the building including an Energy Centre (80 sqm), Water Storage Plant (58 sqm) and 2 no. ESB substation/switch rooms. The ESB substation/switch rooms are accessed directly from Newmarket Square.

Other works include road, footpath, vehicular parking and public realm upgrade works in the immediate vicinity of the proposed building. These proposals include the provision of enhanced pedestrian facilities along Newmarket Square, Ardee Street and Mill Street, and at the 2 no. road junctions immediately to the north-west (Newmarket Square/Ardee Street/Chamber Street junction) and south-west (Mill Street/Ardee Street/Oscar Square/Clarence Mangan Road junction) of the site, respectively. The provision of 5 no. additional on-street car parking spaces (including 1 no. dedicated car share space) and 1 no. loading bay, together with the relocation of an existing bus stop are also proposed along Ardee Street.

The proposed development also includes all associated site and development works and ancillary infrastructure provision, including water services, foul and surface drainage and connections, attenuation proposals, lighting, landscaping and boundary treatments on a site area of 0.32 ha

Table 1: Key Parameters

|                         |  |
|-------------------------|--|
| <b>Site Area</b>        | 0.32ha (nett) 0.19ha (gross when DCC lands included)   |
| <b>Demolition</b>       | All existing buildings on site (c 1962 sq.m)   |
| <b>No. of units</b>     | 134 BTR apartments   |
| <b>Other Use</b>        | 606.1sq.m of ground floor level commercial/retail space with direct frontage onto Newmarket Square and at the corner of Newmarket Square and Ardee Street. |
| <b>Height</b>           | 6-9 storeys. With 6 -7 storeys along the eastern boundary and 9 storeys at the corner of Newmarket Square and Ardee Street. (max height of 31.3m).         |
| <b>Density</b>          | 446.8units per ha (DCC CDP does not contain maximum densities)   |
| <b>Plot Ratio</b>       | 5.4  |
| <b>Dual Aspect</b>      | 47 units (35%) (33% required in Central and Accessible location)   |
| <b>Vehicular Access</b> | None. Existing vehicular access points to the site are to be extinguished.   |

|   |  |
|---|--|
| <b>Car parking</b>                          | 5 no. spaces, loading bay and relocation of bus stop proposed along Ardee Street.  |
| <b>Cycle Space</b>                          | 238 no. resident/visitor bicycle spaces and 2 no. cargo bike spaces at ground floor level.<br>7 no. spaces for the retail/commercial unit. |
| <b>Residential Services &amp; Amenities</b> | 115.7m <sup>2</sup> internal amenity space. This includes a co-working area (c.60.6sq,m) and a games room (c.55.1sq.m).                    |
| <b>Communal Open Space</b>                  | Podium level communal courtyard (c.330sq.m) and 5 no. communal garden terraces at roof level (total of 801sq.m).                           |
| <b>Private Amenity Space</b>                | 53 of 134 units have private balconies, with 2 no. terraces to 2 no. ground floor units and 2 no. units at the 7 <sup>th</sup> floor.      |
| <b>Public Open Space</b>                    | None   |
| <b>Part V</b>                               | 13 Units (9 no. 1 bed and 4 no. 2 bed)   |
| <b>Childcare</b>                            | None   |

Fig 2: Unit Mix

| <b>Unit Type</b> | <b>No. of Units</b> | <b>Percentage</b> |
|------------------|---------------------|-------------------|
| <b>Studio</b>    | 1                   | 0.7               |
| <b>One bed</b>   | 96                  | 71.6              |
| <b>Two bed</b>   | 37                  | 27.6              |
| <b>Three bed</b> | 0                   | 0                 |
| <b>Total</b>     | <b>134</b>          | <b>100</b>        |

The application contains a statement setting out how the proposed development is consistent with the objectives of the Dublin City Development Plan 2016-2022.

The application contains a statement indicating why permission should be granted for the proposed development, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act, 2000, as amended, notwithstanding that the proposed development materially contravenes a relevant development plan or local area plan other than in relation to the zoning of the land.

Letter of consent from DCC Environment & Transportation Department regarding the inclusion of lands with the application site boundaries outlined in red accompanies the application.

The application is accompanied by a Natura Impact Statement (NIS).

Please refer to Appendix 1 for a list of the various technical reports and drawings submitted with the application.

## 4.0 Planning History

### Application Site:

**PA Reg. Ref. 3816/21** refers to a 2021 decision to refuse permission for the demolition of all existing buildings on the site together with site clearance works and the erection of temporary hoardings for the following reason:

- 1. The proposed demolition and loss of the subject buildings at Newmarket, Ardee Street and Mill Street without a plan for redevelopment and reinstatement of the streetscape is considered to be premature, and would result in an empty site which would be seriously harmful to the streetscape character and visual amenity of the Newmarket Conservation Area. The proposed demolition would not protect, provide or improve the amenities of this conservation area, would therefore be contrary to the zoning objective, would set an undesirable precedent for similar type development and is contrary to the proper planning and sustainable development of the area.*

**PA Reg. Ref 5602/04** refers to a grant of permission for internal alterations, including the installation of a new first floor, toilets, minor alterations to external façade, and change of use from light industrial to community/place of worship use.

**SHD Applications in the immediate vicinity include inter alia**



**ABP 303436-19** refers to a 2019 grant of permission for 235 student bedspaces and 37 BTR apartments at Mill Street, Sweeneys Terrace and Clarence Mangan Road, D8. (under construction).

**ABP 305324-19** refers to a 2019 grant of permission for 368 student bed spaces at site known as portion of Brewery Block, bounded by Newmarket, St. Lukes Avenue, Brabazon Place/Brabazon Row and Ardee street (site includes 13/14 Ardee Street and 29 Newmarket, D8).

**ABP 307067-20** refers to a 2020 grant of permission for 413 BTR apartments and retail units at former IDA Ireland business Centre/Newmarket Industrial Estate, bounded by Newmarket, Brabazon Place, St. Lukes Avenue and Newmarket Street, D8. (under construction)

**Other (not SHD) in the immediate vicinity include inter alia:**

**PA Reg. Ref. 3266/20 (ABP 309380-21 invalid appeal)** refers to a DCC grant of permission for the demolition of all structures on site (including No. 41 Chamber Street, a habitable house) and construction of a mixed use development of 27 no. apartments, and 1 no. retail unit at a site at the corner of Chamber Street and Ardee Street and adjoining yard and No. 41 Chamber Street.

**PA Reg. Ref 3217/20 (ABP 308622-20 appeal withdrawn)** refers to a DCC grant of permission for temporary use of student accommodation for tourist accommodation.

**ABP 311854-21** refers to a current appeal for a mixed use development (5-7 storeys) comprising retail and 33 apartments at 10-12 Newmarket and 32 Mill Street.

**ABP 313166-22** refers to a pre-application consultation for 282 student bedspaces at No. 8 Newmarket and No.18 Mill Street.

**PA Reg Ref 2283/17** refers to a Part 8 Public Real Scheme for the Newmarket Area – the proposed works are designed to create a high quality, multifunctional market square and city wide destination and to improve permeability throughout the area via enhanced links to cork Street to the north and Mill Street to the south. Public lighting improvements are included.

Other Applications in the immediate area include Micro-brewery and it is noted that Teelings Distillery and The Liberties Distillery are in the immediate vicinity.

## 5.0 Section 5 Pre Application Consultation

A section 5 pre-application consultation with the applicants and the planning authority took place online under ABP-310833-21 (on the 14<sup>th</sup> October 2021) in respect of a proposed development of 134 BTR apartments and associated site works.

### Notification of Opinion

Following consideration of the issues raised during the consultation process and, having regard to the opinion of the planning authority, An Bord Pleanála issued an opinion that the documentation submitted constitute a reasonable basis for an application for strategic housing development to An Bord Pleanála.

Pursuant to article 285(5)(b)(i) and (ii) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant was notified that the following specific information should be submitted with any application for permission

1. Consideration is required of any matters that have potential to be material contraventions of the Development Plan, with submission of a statement regarding the same if required.
2. The submission of a justification report in relation to BTR use that incorporates a response to likely submissions; data for the locality of the site in terms of housing mix and tenure; management measures; and tenancy details that encourage longer stay (for example: tenancy length, if pets ok, etc.) where possible.
3. Submission of long street elevations to provide context to the proposed design and material finish.
4. The submitted Design Statement should explain the approach to refining and rationalising the elevational appearance of the proposal, including in relation to the top of the building.
5. Explanation of how the quantum and type of internal amenity areas for the proposed BTR use of the site will respond to policy requirements and meet resident's needs.
6. Explanation of whether ground floor units in the proposed development are appropriate in relation to their amenity levels and the overall quality of accommodation provided.
7. A plan annotating separation distances between all windows and balconies / terrace areas, to surrounding areas, and between units in the proposal.
8. Explanation of the aspects from units in the proposed development, avoidance of single aspect north units and description of any necessary compensatory measures.

9. A Daylight, Sunlight and Overshadowing Assessment is required to demonstrate how the proposed development responds to recommendations in the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight' (the BRE guidelines). The methodology of the BRE guidelines should be followed and clearly stated within the submitted assessment. Analysis of all proposed units on each floor should be provided until it can be demonstrated that all units on a floor meet recommended targets, at which point it can be logically assumed units above will also pass (where a stacked arrangement to room use is proposed). APSH analysis of both the proposed accommodation and existing properties should be provided. Overshadowing analysis of all exterior amenity areas both within the development and in surrounding areas should also be provided, or an explanation given as to why analysis is not required. Explanation should also be provided of whether current surrounding development form, or future approved development form is tested.
10. A report that specifically addresses the proposed materials and finishes of buildings, landscaped areas and any screening/boundary treatment. Details to be provided of the edge treatment to the courtyard as it adjoins the neighbouring site. Particular regard should be had to the requirement to provide high quality and sustainable finishes and details which seek to create a distinct character for the development.
11. Explanation of any cumulative impacts arising during construction stage and mitigation associated with this.
12. A explanation of cultural and built heritage interactions and implications.
13. Details of any existing community / place of worship use on the site and how this will be impacted by the proposed works.
14. Additional details and/or revised proposals in relation to comments from Transportation Planning Division at the Planning Authority.
15. Additional details and/or revised proposals in relation to comments from the Drainage Division at the Planning Authority.
16. Additional details and/or revised proposals in relation to comments from the Parks, Biodiversity and Landscape Services at the Planning Authority.
17. A Housing Quality Assessment with regard to relevant national and local planning policy on residential development.
18. The information referred to in article 299B(1)(b)(ii)(II) and article 299B(1)(c) of the Planning and Development Regulations 2001-2018 unless it is proposed to submit an EIAR at application stage.

The applicant has submitted a response to items no.1 to 18 of the detailed Specific Information required in an attempt to address these matters:

**No. 1:** Refer to the 'Material Contravention Statement' which should be read in conjunction with the 'Planning Report & Statement of Consistency'.

**No. 2:** Refer to the 'Justification for Build to Rent Housing Development Report'

**No. 3:** Refer to Drg. No. P19-149D-3.1-2014 which provides contextual elevations along Newmarket Street, Ardee Street and Mill Street.

**No. 4:** Refer to the 'Design Assessment Report' which should be read in conjunction with the 'Planning Report & Statement of Consistency'.

**No. 5:** Refer to the 'Justification for Build to Rent Housing Development Report' which should be read in conjunction with the 'Planning Report & Statement of Consistency'.

**No. 6:** Refer to the 'Housing Quality Assessment Report'.

**No. 7:** Refer to the submitted floor plans and the 'Housing Quality Assessment Report'.

**No. 8:** Refer to the 'Housing Quality Assessment Report' which should be read in conjunction with the 'Planning Report & Statement of Consistency'.

**No. 9:** Refer to the 'Daylight, Sunlight and Overshadowing Report'.

**No. 10:** Refer to the 'Design Assessment Report' and the 'Landscape Design Report' & drawings.

**No. 11:** Refer to the 'Outline Construction & Environmental Management Plan' which should be read in conjunction with the 'EIA Screening Report'

**No. 12:** Refer to the 'Archaeological Desktop Report' and 'Architectural Conservation Report' which should be read in conjunction with the 'EIA Screening Report'.

**No. 13:** Refer to the letter from Liberty Church. Liberty Church is relocating to a premises at Bluebell Community Centre, Dublin 8.

**No. 14:** Refer to the 'Infrastructure Report' together with the 'Residential Travel Plan/Mobility Management Plan', 'Parking Report' and 'DMURS Compliance Statement'.

**No. 15:** Refer to 'Infrastructure Report'

**No. 16:** Refer to 'Landscape Design Report' and associated drawings.

**No. 17:** Refer to the Housing Quality Assessment Report which should be read in conjunction with the 'Planning Report & Statement of Consistency'

**No. 18:** Refer to the 'EIA Screening Report' and 'Article 299B Statement'

## **6.0 Policy Context**

### **6.1 National**

#### **National Planning Framework 2018-2040**

National Strategic Outcome 1, Compact Growth, recognises the need to deliver a greater proportion of residential development within existing built-up areas. Activating these strategic areas and achieving effective density and consolidation, rather than sprawl of urban development, is a top priority.

Objective 2A identifies a target of half of future population growth occurring in the cities or their suburbs. Objective 3A directs delivery of at least 40% of all new housing to existing built-up areas on infill and/or brownfield sites.

Objective 4 to ensure the creation of attractive, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and wellbeing

Objective 13 is that, in urban areas, planning and related standards including in particular building height and car parking will be based on performance criteria to achieve well-designed high-quality outcomes in order to achieve targeted growth.

Objective 27 to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.

Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

Objective 35 promotes increased densities through measures including infill development schemes, area or site-based regeneration and increased building height.

#### **Rebuilding Ireland – Action Plan for Housing and Homelessness 2016**

Pillar 4 refers to the Improvement of the Rental Sector. Key objectives include addressing the obstacles to greater private rented sector delivery, to improve the supply of units at affordable rents.

Key actions include encouraging the “build to rent” sector and supporting greater provision of student accommodation.

### **Housing for All – A New Housing Plan for Ireland (2021)**

It is a multi-annual, multi-billion euro plan which will improve Ireland’s housing system and deliver more homes of all types for people with different housing needs.

The government’s overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life

The government’s vision for the housing system over the longer term is to achieve a steady supply of housing in the right locations with economic, social and environmental sustainability built into the system.

The policy has four pathways to achieving housing for all:

- supporting home ownership and increasing affordability
- eradicating homelessness, increasing social housing delivery and supporting social inclusion
- increasing new housing supply
- addressing vacancy and efficient use of existing stock

Housing for All contains 213 actions which will deliver a range of housing options for individuals, couples and families.

### **Section 28 Ministerial Guidelines:**

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority and observers, I am of the opinion that the directly relevant section 28 Ministerial Guidelines are:

- Urban Development and Building Heights, Guidelines for Planning Authorities (2018).
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020).
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), and the accompanying Urban Design Manual.
- Design Manual for Urban Roads and Streets (DMURS).

- Retail Planning Guidelines for Planning Authorities (2012) and the Retail Design Manual.
- Childcare Facilities – Guidelines for Planning Authorities (2001)
- Appropriate Assessment of Plans and Projects in Ireland - Guidelines for Planning Authorities (2009, updated 2010)
- The Planning System and Flood Risk Management (including the associated ‘Technical Appendices’) (2009).

## 6.2 Regional:

### **Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES) 2019.**

The RSES including the Dublin Metropolitan Area Strategic Plan (MASP) was adopted on the 3rd of May 2019.

The RSES is underpinned by key principles that reflect the three pillars of sustainability: Social, Environmental and Economic, and expressed in a manner which best reflects the challenges and opportunities of the Region.

RPO 4.3 supports “the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built-up area of Dublin City and suburbs.”

Section 5.3 identifies guiding principles for development of the metropolitan area, which include: Compact sustainable growth and accelerated housing delivery – To promote sustainable consolidated growth of the Metropolitan Area, including brownfield and infill development, to achieve a target to 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs. To support a steady supply of sites and to accelerate housing supply, in order to achieve higher densities in urban built up areas, supported by improved services and public transport.

## 6.3 Local:

### **Dublin City Development Plan 2016-2022**

The site is located on lands zoned objective for **Z10** is *‘to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant use in inner city areas’*

- Residential is a permissible uses within the mixed use Z10 zone.

### **Section 14.8.10 - Inner Suburban and Inner City Sustainable Mixed Use- Zone 10**

- Primarily residential, office and retail use.

- The re-development of mono-uses shall not generally be permitted

The northern portion of the site is located in the **Newmarket Conservation Area**, therefore the following polices apply.

- **Policy CHC4 & CH5:** Conservation Areas: Development will not harm the features of special interest in the conservation areas or involve harm to loss of traditional fabric.
- **Section 11.1.5.8:** Demolition of Protected Structures and Buildings in Architectural Conservation Areas. The demolition of structures which make a positive contribution to protection structure or conservation area will be restricted. The acceptability of demolition will be considered having regard to the impact on the character of the ACA.
- **Appendix 24:** Protected Structures and Buildings in Conservation Areas.

The site is located in a zone of **Archaeological Interest Dublin City (DU0180-020)**.

- **Policy CHCO10-** Protect and promote those sites of archaeological interest.

## **Chapter 15 –Strategic Development and Regeneration Areas**

The subject site is located within SDRA 16 encompassing the Liberties and Newmarket Area which is identified as a key area for development and regeneration.

### **Section 15.1.1.19- Strategic Development and Regeneration Area (SDRA) 16, Liberties and Newmarket Square.**

The following are provided in order to support the development and regeneration of SDRA 16:

1. To improve the quality of life so that the Liberties area becomes a great place for people to live, work and visit.
2. To provide for appropriate social and community infrastructure to support the existing population, which is growing and becoming increasingly diverse.
3. To provide for a wide diversity and choice of housing that can cater for families and older people by including options for mixed tenure and a range of housing types and unit sizes.
4. To stimulate the local economy and to include a critical mass of appropriate development and investment to provide significant employment opportunities, including in the digital media sector as the Digital Hub has the potential to rejuvenate the economic profile of the Liberties.
5. To recognise the unique role the Liberties plays in Dublin's character and to ensure that regeneration safeguards a strong sense of community identity.
6. To identify and protect the distinctive heritage of the area and encourage sustainable and innovative re-use of historic spaces and structures.



7. To ensure that the individual character of different areas within the Liberties is protected and enhanced by contemporary and high-quality design of new buildings.
8. To promote the principles of good urban design including improving connectivity and enhancing the legibility and permeability of the Liberties in relation to the wider cityscape.
9. To create a high-quality network of public spaces, parks and streets.
10. To promote sustainable modes of transport by making them convenient and attractive, including walking and cycling routes, and by facilitating the provision of public transport infrastructure and optimising its use.
11. To improve and encourage the cultural and tourist offer of the area.
12. To encourage environmental sustainability by improving biodiversity, facilitating recycling, and minimising the use of non-renewable resources, including energy.

Figure 36- The site is located in **Key Development Areas (KDA) C – Newmarket.**

**Policy SC1-** Consolidate and enhance the inner city by linking the critical mass of existing and emerging clusters and communities such as Newmarket, with each other, and to regeneration areas.

**Policy CEE5-** Improve linkages between key economic areas of the city by improving permeability, public transport, improving the public domain and tackling vacant sites/ dilapidated buildings.

### **Section 16.7 – Building Heights**

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

- Low Rise- Inner City – Up to 24m (residential)
- Assessment criteria for Higher Buildings.

## **6.4 Applicants Statement of Consistency**

The applicant has submitted a Statement of Consistency as per Section 8(1)(iv) of the Act of 2016, which states how the proposal is consistent with National, Regional and local policy and requirements of section 28 guidelines.

## **6.5 Applicants Statement of Material Contravention**

The applicant has noted that elements of a proposed development may contravene a policy or objective of a statutory land use plan but may not be determined to represent a 'material contravention(s)' of the plan. This is a matter of professional planning judgement. The submitted Material Contravention Statement has included a number of matters that are considered to represent contraventions of the DCDP, primarily to comply with Ministerial Guidelines published since the adoption of the DCDP and could be determined to 'materially contravene' the relevant provisions of the plan. These matters relate primarily to residential qualitative / quantitative standards, as set out in Chapter 16 of the DCDP. It is also noted that sub-section 16.10.1 of the DCDP acknowledges national guidance in this regard.

A Material Contravention Statement submitted with the application note that an abundance of caution approach has been taken to the identification of the provisions referenced and addressed in the Statement. In summary these matters relate to apartment development standards in respect of:

- Height
- Unit mix
- Minimum apartment floor areas
- Block configuration (number of units per access core)
- Minimum internal apartment space standards
- Private amenity space
- Public open space

#### **Justification for Material Contravention:**

##### **Height:**

Sub-Section 16.7.2 of the DCDP stipulates maximum permissible building heights of up to 24m for residential development and 28m for commercial development in inner city locations such as the subject site.

The proposed development ranges in height from 6/7 storeys on the eastern boundary of the site to integrate with an adjoining recently constructed office development to 9 storeys at the north-western corner of the site at the junction of Newmarket Square and Ardee Street. In this regard, the proposed building height exceeds the 24m residential building height standard of the DCDP, with an 8th floor level parapet height of c. 28.6m and a total maximum height of c. 31.3m due to a lift over-run and stair core providing access to a top floor roof level communal amenity space.

Having regard to the specific provisions of Section 37(2)(b)(iii) of the 2000 Act, it is submitted that the proposed development meets the requirements of SPPR 3A of the Building Height Guidelines. The Guidelines advocate a shift away from the application of generic maximum heights, as provided for under sub-section 16.7.2 of the DCDP, towards a performance criteria driven approach.

The Material Contravention Statement sets out how the proposed height complies with the criteria contain in section 3.2 of the Building Height Guidelines.

The applicant refers to ABP 307067-20 at the former IDA Ireland Small Business Centre at Newmarket and submits that the same justification as contained in the Board Order relating to section 37(2)(b)(i) and (iii) apply to the current proposal before the Board.

**Unit mix:**

Section 16.10.1 of the Dublin City Development Plan 2016-2022 states that in 'build to let' schemes that up to 42-50% of the total units may be in the form of one bed or studio units.

The proposed proportion of studio and 1 bed units at 72.4% of the total number of units is in excess of the 42-50% provided for in section 16.10.1 of the City Development Plan. As such, the proposed unit mix could be considered to materially contravene the City Development Plan. However, the proposed unit mix is consistent with SPPR 8(i) of the Apartment Guidelines which removes restrictions on dwelling mix for BTR schemes where it states that 'No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise.'

It is submitted that the proposed unit mix satisfies an identified housing need in the City and the Dublin 8 area, and that the proposed development will contribute positively to expedite housing delivery as acknowledged in sub-section 5.7 of the Apartment Guidelines.

The applicant submits that having regard to the provisions Sections 9(3)(b) and 9(6) of the 2016 Act and Section 37(2)(b)(iii) of the 2000 Act, the proposed development could be granted having regard to the Apartment Guidelines.

**Minimum apartment floor areas:**

The DCDP standards for 1-bed and 2-bed (4 person) apartments are consistent with the requirements of the Apartment Guidelines. However, the Development Plan only includes a single standard for two-bed apartments which is consistent with the 4 person, two-bed apartment provided for under the Apartment Guidelines (73 sq.m minimum GFA). However, Para. 3.6 of the Apartment Guidelines states that 'planning authorities may also consider a two-bedroom apartment to accommodate 3 persons, with a minimum floor area of 63 square metres'. It is also noted that the minimum floor area for studio units at 37 sq.m and as promoted in the Apartment Guidelines are 3 sq.m smaller in area / size than the relevant DCDP standard of 40 sq.m. However, the proposed studio unit comfortably exceeds the DCDP standard with a proposed overall floor area of 43 sq.m.

Having regard to the submitted RAU Drawing No. P19-1490-3.1\_402 (Rev P01) showing the typical layout of the proposed 2-bedroom / 3-person units it is noted that this unit type has been designed to the 63 sq.m overall apartment floor area standard promoted in the Apartment Guidelines. Given that the DCDP does not make express provision for 2-bed / 3-person units, it is considered that the proposed 2-bed / 3- person units could be considered to be a material contravention of the Development Plan.

In addition to the above, it is also a requirement of the DCDP that 'the majority of all apartments in a proposed scheme of 100 units or more must exceed the minimum floor area standard by at least 10% (studio apartments must be included in the total but are not calculable as units that exceed the minimum).'

Having regard to Table 6.2 of the accompanying Planning Report and Statement of Consistency, it is noted that 6 of the 97 no. 1-bed units (including the single studio unit) exceed the floor area standard by 10% or more. This represents approximately 4.5% of the total number of apartments. However, it is noted that a total of 91 no. of the 134 no. apartments (68%) exceed the minimum standards albeit by less than a 10% margin.

Unlike the DCDP development plan standards, Section 5 of the Apartment Guidelines distinguishes between build-to-sell and build-to-rent typologies and provides express guidance on the Build to Rent (BTR) development typology as proposed in the subject application - in this regard SPPR 7 of the guidance is relevant. SPPR 8 goes on to provide distinct planning criteria applicable to BTR development and in this regard SPPR 8 (iv) removes the requirement that majority of all apartments in a proposed BTR scheme should exceed the minimum floor area standards by a minimum of 10%.

Notwithstanding the above, given that approximately 68% of the total number of BTR units would exceed minimum prescribed floorspace standards, it is submitted that the proposed units will provide a high standard of accommodation and amenity to meet modern living standards / requirements and will therefore meet the expectations/needs of future occupants/residents.

**Block configuration:**

The DCDP requires that there ‘... shall be a maximum of 8 units per core per floor, subject to compliance with the dual aspect ratios .... Hallways and shared circulation areas should be appropriate in scale and should not be unduly narrow. They should be well lit, where possible with some natural light and adequate ventilation. Movement about the apartment building should be easily understandable by all users by keeping internal corridors short with good visibility along their length. In certain circumstances, deck access may be acceptable as long as bedrooms do not face out on to the deck and it is well proportioned and designed. In some cases, secondary bedrooms facing on to the deck may be acceptable if quality issues are satisfactorily addressed by careful design such as providing a semi-private external buffer zone. The key performance criterion is the quality of residential amenity.’

A maximum of 19 units are provided on a single floor, benefitting from 2 no. stair/lift cores located in the north-western and southern portions of the proposed building respectively, together with an emergency escape stair core in the north eastern portion of the building. 11 no. units are provided on the 7th floor level, serviced by a single stair/lift core. In this regard, the proposed development is compliant with the requirements of SPPR 6 and the flexibility for more than 12 units per core provided by SPPR 8(v) of the Apartment Guidelines

**Minimum internal apartment space standards:**

The DCDP sets out minimum internal space requirements for living/dining/kitchen rooms, bedrooms and storage areas.

All proposed 2-bed/3-person units (Unit Type 2.0, as detailed on RAU Drawing No. P19-149D-3.1\_402 (Rev. P01) do not meet the required 30 sq.m aggregate living/dining/kitchen floor area as per the DCDP standard for 2-bedroom units. However, with an internal aggregate floor area of 28.8 sq.m, this unit type meets the required 28 sq.m aggregate floor area for living/dining/kitchen rooms, as identified in Annex 1 of the Apartment Guidelines.

In terms of storage provision, the DCDP requires the following minimum standards: – Studio unit: 3 sq.m. – 1-bedroom unit: 3 sq.m – 2-bedroom unit: 6 sq.m Whilst the above standards for studios, 1-bed and 2-bed / 4-person units are consistent with the standards promoted in the Apartment Guidelines, it is noted that the Apartment Guidelines provides a distinct 5 sq.m storage requirement / standard in respect of 2-bed / 3-person units that is lower than the 6 sq.m standard for a 2-bed/4-person unit. In this regard, the proposed 2-bed/3-person unit type (as referenced above) does not meet the DCDP storage space standard of 6 sq.m but satisfies the minimum required 5 sq.m storage space, as per the Apartment Guidelines.

### **Private amenity space:**

The DCDP requires that private open space shall be provided in the form of gardens or patios/ terraces for ground floor apartments and balconies at upper levels. The minimum depth of private amenity open space (balcony or patio) shall be 1.5 m and the minimum area / size shall be as follows: • Studio unit: 4 sq. m. • 1-bedroom unit: 5 sq.m • 2-bedroom unit: 7 sq.m. A total of 57 units benefit from private amenity space, primarily in the form of balconies, which represents 43% of the total number of units proposed.

SPPR8 (ii) of the Apartment Guidelines afford flexibility for a BTR scheme. It is submitted that this level of provision of private amenity space is appropriately supplemented through generous provision of outdoor communal amenity space and a range of indoor communal recreational facilities and amenities.

It is submitted that the quantity, quality and variety of the communal indoor and outdoor amenity and recreational spaces will ensure a very high level of amenity is provided for all units / residents of the scheme. This level of communal amenity space provision will appropriately compensate for some units not benefitting from private amenity space provision, consistent with SPPR8(ii) of the Apartment Guidelines

### **Public open space:**

Sub-section 16.3.4 of the DCDP states that: *‘There is a 10% requirement specifically for all residential schemes as set out in Section 16.10.1. This requirement also relates to other zonings such as Z6 and Z10.’* It then goes on to state that where *‘...the site is considered by the planning authority to be too small or inappropriate (because of site shape or general layout) to fulfil useful purpose in this regard, then a financial contribution towards provision of a new park in the area, improvements to an existing park and/or enhancement of amenities shall be required (having regard to the City’s Parks Strategy).’*

The subject site is restricted in size and extends to only 0.32ha in extent. The subject site consists entirely of built elements, with the majority of the site containing existing buildings (0.19ha) and the remaining portion of the site area (0.13ha) is included to facilitate pedestrian and public parking upgrade works to the immediate surrounding public roadways under the control of Dublin City Council.

It is submitted that the shape and size of the application site is not conducive to the provision of publicly accessible open space, or at least to such an extent as 'to fulfil useful purpose in this regard'. Given the above provisions of national guidance as echoed in the DCDP, it is submitted that due to the proximity of the site to existing parks and public open spaces it is appropriate in this instance to apply a relaxation in the provision of public open space, and that the Board could consider an appropriate condition requiring the provision of a financial contribution in lieu of such provision towards public open space enhancement in the vicinity of the site. In this regard it is noted that the subject site is located close to a number of existing public open spaces/parks, such as:

- Newmarket Square, adjoining the site to the north is permitted to be redeveloped (Part 8 DCC Ref. 2283/17) with extensive public realm and landscaping works to provide a high quality, multi-functional market square and public space, as a city-wide destination;
- Oscar Square Park, located approximately 70m to the south-west of the subject site;
- Weaver Park, a modern public park opened in 2018, located approximately 120m to the west of the subject site ;
- The Cabbage Garden c. 480m to the east; and,
- St Patricks Park located c.450m to the north-east.

It submitted that the proposal makes a valuable contribution towards public realm upgrade works in the immediate vicinity of the proposed building by providing enhanced pedestrian footpath widths, improved junction crossing points and the regularisation of on-street parking along Ardee Street that will benefit existing and future residents, and visitors to the area. The proposed development, in conjunction with the local public realm/road improvement works permitted under the Part 8 proposal for Newmarket Square, will significantly enhance the public realm, permeability and accessibility of this redevelopment/regeneration area of Dublin City.

### **Conclusion:**

On the basis of the foregoing, it is submitted that the Board can consider granting permission for the proposed development under the provisions and requirements of section 10(3) of the 2016 Act, in contravention of the DCDP for the reasons stated under sub-sections 3.1 and 3.2 above and pursuant to Section 37(2)(b) of the Act of 2000.

Given that the subject site is located on appropriately zoned lands which are well serviced and connected, it is submitted that having regard to Section 37(2)(b)(ii) and Section 37(2)(b)(iii) of the Planning and Development Act, 2000 (as amended), An Bord Pleanála can grant permission should the Board determine that the proposed development would constitute a material contravention of the Development Plan in terms of the proposed apartment floor areas; unit mix; block configuration / layout; internal layouts / standards; public open space provision; private amenity space provision and building height.

In conclusion the applicant notes that the Board and/or DCC have permitted a number of strategic housing developments in the vicinity of the application site that constitute relevant and appropriate precedents for similar developments, particularly in respect of permissible building heights, residential density and dwelling mix. These developments are summarised in sub-section 3.4 and Appendix A of the submitted Planning Report and Statement of Consistency

## **6.6 Designated Sites**

The proposed development is not in or adjacent to any Natura 2000 site. The site is located c. 4.4km to the west of South Dublin Bay and River Tolka Estuary SPA (site code 004024) and South Dublin Bay SAC (site code 000210) And c.7.9km southwest of North Bull Island SPA (site code 004006) and North Dublin Bay SAC (site code 000206).

## **7.0 Observer Submissions**

7.1 The Board received 4 valid submissions, these included 2 from Prescribed Bodies (refer to section 9 of this report) and 2 observer submissions which I propose to summarise in this section.

Given the number of observations received I shall summarise each individually below which are dealt with in the assessment that follows.

### **7.2 Observation submission from Cllr Máire Devine.**

#### **Build to Rent Model (BTR)**

- Welcome the development of a long vacant site but the proposal for a BTR development is substandard and unsustainable.
- The unsustainability if the BTR model has been recognised by DCC and its elected representatives as can be seen in the Draft City Development Plan.
- BTR does not address the housing needs of the local community.



- The area has been severely impacted in the past decade by the scale of the transient community in this small historic part of the city.

### **Standard of Accommodation**

- Apartment sizes are below the Dublin City Plan requirements.
- Some apartments do not have balconies.

### **Height**

- Height and massing of blocks is overbearing and dwarfs the original streetscape. Should be stepped down where it is in proximity to low rise two storey houses on the opposite side of the road.

### **Impacts on Local community during Construction Phase**

- An in depth Traffic Management Plan is required and dedicated parking for construction workers should be provided to avoid overspill to neighbouring roads.
- Construction Management Plan should clearly address noise and early morning disturbances to local residents.

## **7.3 Observer submission received from John Conway and the Louth Environmental Group (BLC Solicitors)**

### **SEA Directive**

- The Board should refuse to consider and cannot grant permission for the proposed development in circumstance where such grant would have to be justified by reference to the Guidelines for Planning Authorities on Urban Development and Building Height 2018 and the Apartment Guidelines dated December 2020. These Guidelines and the specific planning policy requirements contained therein are ultra vires and not authorised by section 28(1C) of Planning and Development Act 2000 (as amended). In the alternative, insofar as section 28 (1C) purports to authorise these Guidelines including specific planning policy requirements, such provision is unconstitutional/repugnant to the Constitution. The said Guidelines are also contrary to the SEA Directive, insofar as they purport to authorise contraventions of the development plan/local areas plan, without an SEA being conducted, or a screening for SEA being conducted, on the variations being brought about to the development

### **Material Contravention of the Development Plan and/or Local Area Plan**

- The proposed development materially contravenes the height and visual impact, density, housing mix, provision of public open space, carparking, provision of childcare, Architectural Conservation Area, non-compliance with Local Area Plan/Masterplan/Urban Design Framework (Policy Objectives SSO2a & PM17), requirements/provisions provided in the Development Plan and Local Area Plan. The aforesaid materially contraventions cannot be justified by reference to s.37(2) of the Planning and Development Act 2000 or s.28 Guidelines.
- The proposed development materially contravenes the Development Plan/Local Area Plan and the provisions relating to building height and visual impact. The aforesaid materially contravention cannot be justified by reference to the Guidelines for Planning Authorities on Urban Development and Building Height 2018 ('the Height Guidelines'), including SPPR's set out therein. The aforesaid materially contravention cannot be justified by reference to s.37(2) of the Planning and Development Act 2000.
- The proposed development and documentation presented does not comply with the requirements of the Guidelines for Planning Authorities on Urban Development and Building Height 2018 ('the Height Guidelines'), including SPPR's set out therein and the criteria and specific assessments identified therein, including SPPRs 1, 2 and 3 referred to in the Material Contravention Statement submitted. The Board cannot grant permission for the proposed development in circumstances where the relevant criterion under the Height Guidelines, which are mandatory in nature, cannot be satisfied.
- The Board cannot grant planning permission for this development under section 37(2)(b) of the Planning and Development Act 2000. The proposed development is not of strategic or national importance – the Developer has not adduced any objective basis for asserting that the proposed development is of strategic or national importance. Purported reliance in the definition of 'strategic housing development' under the 2016 Act as a basis for asserting that the proposed development is of strategic or national importance is erroneous.
- If the Board purports to justify non-compliance with the objectives of the LAP, Development Plan, masterplan and/or Urban Design Framework – same will amount to an unlawful breach of the requirements of the SEA Directive.

#### **EIA Screening:**

- The EIAR is inadequate and deficient and does not permit an assessment of the potential environmental impact of the proposed development.
- The application and application documentation, does not comply with the mandatory requirements of the Planning and Development Regulations 2001 (as amended), including in relation to EIA screening.

- The Board lacks ecological and scientific expertise and/or does not appear to have access to such ecological/scientific expertise in order to examine the EIA Screening Report a required under Article 5(3)(b) of the EIA Directive.
- The proposed development and documentation submitted, including the Planning Report, does not comply with the requirements of the Planning and Development Act 2000, the Planning and Development Regulations 2001 or the EIA Directive. The information submitted by the developer is insufficient and contrary to the requirements of the EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) and the provision of national law, including the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).
- Notwithstanding that the proposed development is sub-threshold for the purposes of requiring an mandatory EIA, by way of general overview it is submitted that due, inter alia, to the nature of the development site (which includes the fact that it currently contains identified contaminants, including asbestos), that nature of the proposed development (including the proposed height of same) and locus of the proposed development adjacent to a protected habitat, it should have been subjected to a full EIA. Article 2(1) of Directive 2011/92 (as amended by Directive 2014/52/EU) governs the relationship between giving consent and the assessment of the environmental effects.
- The Screening for EIA presented by the Developer, including the Ecological report submitted, is inadequate and deficient and does not permit an assessment of the potential environmental impacts of the proposed development.
- The application and application documentation does not comply with the mandatory requirements of the Planning and Development Regulations 2001 (as amended), including in relation to EIA Screening.
- The Planning Report, and the EIA Screening when read together with CWMPs provides insufficient information to enable a proper and complete assessment of pollution and nuisances arising from the proposed development. Similarly there is insufficient information to assess the impact on risk to human health arising in respect of the proposed development.
- The criteria contained in the EIA Screening Report does not comply with the requirements of the Planning and Development Act 2000, 2016 Act and associated Regulations. The Application and application documentation does not comply with the mandatory requirements of the Planning and Development Regulations 2001 (as amended).
- Having regard to the potential cumulative impacts arising from the proposed development and similar SHD developments and noting the size of the proposed development the EIAR has failed to provide a comprehensive cumulative assessment of the project in the EIAR.

- The Population and Human Health chapter of the EIA Screening Report is inadequate in that it fails to assess the impact of an increased population in the area on services including schools, childcare and medical care.
- The impact on biodiversity and human health arising from the proposed development, during the construction and operational phases, is inadequate and lacking in terms of detail – the EIA Screening Report is deficient in this regard.
- The EIA Screening is deficient and flawed insofar as it is based on an incomplete description of the proposed development – including those aspects of the development pertaining to the construction phase.
- The proposed development does not comply with and is not in accordance with BRE Guidelines. The proposal is not in compliance with the said Guidelines.
- There is insufficient information contained within the application in relation to the impact of the proposed development (during both the construction phase and built/operational phase) on the impacts on bird and bat flight lines/collision risks for the purposes of EIA Screening Report, AA Screening Report and the Height Guidelines (and the specific assessments detailed therein), and the relevant assessment required to be carried out by the Board in respect of same cannot be completed in the absence of same. The screening for EIA does not adequately consider the impact of same on biodiversity – pursuant to Article 3 of the EIA Directive (as amended) the EIA (or Screening for EIA) shall identify, describe and assess in an appropriate manner, the direct and indirect effects of the project inter alia “biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC” [the Habitats and Bird Directive].

**Appropriate Assessment:**

- The AA Screening is insufficient and contains lacunae and is not based on appropriate scientific expertise – as such the Board cannot comply with the requirements of the Habitats Directive and relevant provisions of national law under the Planning and Development Act 2000 (Ref. to *Holohan & Ors v ABP* preliminary ref. 7 November 2018 para 33) and reference to various European cases.
- The proposed development does not comply with the requirements of the Planning and Development Act 2000 (as amended) (under Part XAB of the 2000 Act (SS 177R-177AE) the Habitats Directive due to inadequacies, lacunae in the AA Screening Report prepared by the developer for the Board, does not have sufficient and/or adequate information before it to carry out a complete AA screening in relation to the proposed development.
- The AA screening report does not provide sufficient reason for findings are required under Article 6(3) of the Habitats Directive and national law, to the requisite standard. There is an absence of reasoning provided in relation to screening conclusions by reference to scientific information.

- The AA Screening is flawed and does not consider and describe all aspects of the proposed development – including relevant aspect arising during the construction phase, such as construction compounds and haul roads etc.
- Insufficient surveys have been carried out to assess the potential impacts arising from bird collision/flight risks in so far as the proposed development may impact bird flight paths.
- The Zone of Influence (Zol) is not reasoned or explained.
- The AA screening fails to identify and consider all potential impacts on protected bird species – including by reference to potential collision flight risk during both construction and operation phase.
- No regard/or inadequate regard have been given to the cumulative effects the proposed development, in combination with other development in the vicinity, on the protected sites.
- The AA Screening report impermissibly has regard to mitigation measures.
- Insufficient site specific surveys were carried out for the purpose of the AA Screening – same is based on an absence of site specific scientific evidence.

#### **Validity of Planning Application:**

- The application and application documentation does not comply with the requirements of the Planning and Development Regulations 2001 (as amended) in terms of particulars provided with the application in respect of the proposed development, including in relation to the plans and particulars lodged. The application documentation does not comply with the requirements of the 2016 Act and the associated Regulations in relation to the requirements for detailed plans and particulars.
- The application documentation has not demonstrated that there is sufficient infrastructure capacity to support the proposed development, including by reference to public transport, drainage, water services and flood risk.

#### **Build to Rent Model**

- Dublin City Development Plan 2022-2028 refers to new BTR scheme of more than 100 homes would have at least 40% of the properties for sale.
- This area of Dublin is becoming saturated with BTR type developments. Dublin 8 in particular is vulnerable to this sort of over dense 100% BTR developments which exclude family size units and facilities such as childcare. Which is not conducive to the aims of the City Development Plan or NDP around sustainable neighbourhoods.

## 8.0 Planning Authority Submission

In compliance with section 8(5)(a) of the 2016 Act the planning authority for the area in which the proposed development is located, Dublin City Council, submitted a report of its Chief Executive Officer in relation to the proposal. This was received by An Bord Pleanála on 17<sup>th</sup> February 2022. The report may be summarised as follows:

### 8.1 Information Submitted by the Planning Authority

The submission from the Chief Executive includes details in relation site location and description of proposal, zoning, planning history, interdepartmental reports, summary of submissions/observations, summary of views of elected members, policy context and assessment.

### 8.2 Summary of views of Elected Representatives - Meeting of the South Central Area Committee (25<sup>th</sup> January 2022). (4 no. Cllr recorded in attendance, refer to Appendix B for list of attendees). The Minutes of the Meeting are included in Appendix B of the CE Report.

I refer the Board to the Minutes of the meeting attached to the CE Report which provides the following summary:

Members welcomed the development of the site in a prime location in an area of the city in need of regeneration. It was stated that the site is suitable for a high density development but that it would be preferable if the height and massing of blocks was stepped down where it is in proximity to low-rise two-bed houses on opposite side of road. Concerns were also expressed in relation to another build-to-rent development in the area and the small size of amenity and apartment sizes which are below that required under City Development Plan. It was also stated that it is essential that a proper Construction Management Plan be put in place, in an area which already has a high number of construction sites and nearby DCC Depot, to mitigate problems with parking by construction workers, construction traffic, noise disturbance etc.

Summary of the concerns/observations which were expressed by members:

- Members welcomed the development of this underused prime site in an area which has long been identified to be in need of Area Regeneration and there is a great community in the area.
- It was stated that the site is suitable for a high density development but it would be preferable if the height of blocks was stepped from the context of having essentially two-bed low density houses on opposite side of road.
- It was stated that these developments will help to rejuvenate that area of the city but concerns were expressed in relation to the Build-to-Rent model which is unsustainable and measures are being taken in the City Development Plan to address issues with same.

- The view was expressed that not every unit is going to have a balcony and you need some flexibility but it seems like there are many units where the apartment and amenity sizes are below that required under City Development Plan which would make them unpleasantly small to live in. For example it was stated that the size for communal/kitchen areas for two bed-units is below what is required under City Development Plan and some of those units in turn wouldn't have a clear private amenity or balcony space.
- There are a series of items mentioned in Material Contravention Statement which are below the standard required under the City Development Plan and it was stated that this would have a negative impact on the amenities of residents of these dwellings.
- We are coming to the end phase of the Newmarket Regeneration and hopefully residents can look forward an imminent end to all of the upheaval and construction work that is happening there.
- It was pointed out that it is essential that an appropriate Construction Management Plan needs to be submitted and assessed as part of this application and then a more detailed plan agreed at compliance stage prior to commencement of development.
- There is limited parking on the site which is quite small and it was questioned what provisions are being made for parking by construction workers and dealing with construction traffic as part of a Construction Management Plan.
- It was stated that there have already been issues with overspill parking and noise and disturbance from very early in morning from the DCC depot in nearby Sweeney Terrace and we have to be careful that ongoing and further proposed development in the area don't compound that problem. A proper Construction Management Plan is therefore essential to mitigate that.

### **8.3 Planning Assessment**

#### **Zoning:**

The planning authority considered that the development as proposed is consistent with relevant zoning objectives on the site.

#### **Density, Plot Ratio and Site Coverage:**

The City Development Plan states that the indicative plot ratio for a site zoned Z10 is between 2.0 and 3.0 with an indicative site coverage of 50%. The proposed plot ratio is stated as 5.6 and the scheme provides a site coverage of 50%.

The 2016-2022 Dublin City Development Plan sets no actual upper unit density limit for any zoned lands, with each proposal to be assessed on its own merits. It is noted that the subject site is a brownfield, infill site located in Newmarket Square which is undergoing significant, planned urban renewal. The mix of uses in the proposed development would integrate and complement adjoining emerging development within the wider Newmarket Square area. Furthermore, the subject site is proximate to high frequency bus corridors to the north and east, together with the Fatima Stop of the Luas Red Line approximately 1km to the north-west.

Overall, the planning authority consider that the subject property represents an underutilised site and therefore a higher plot ratio is deemed acceptable in this instance, subject to high quality design and appropriate levels of residential amenity both internal and external to the application site.

### **Height and Visual Impact:**

Section 16.7.2 of the City Development Plan: Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development addresses the issue of building height in the city. The Plan sets 24m as the maximum height permissible for residential developments at this location.

The proposed development ranges in height from 6/7 storeys on its eastern boundary to 9-storeys at the corner of Newmarket Square and Ardee Street. The proposed building height of 31.3m at the 9- storey corner element exceeds the 24m residential building height standard of the City Development Plan.

The planning authority considers that the proposed building height should aim to integrate into the streetscape along Ardee Street. The requirement to mark the entrance onto Newmarket Square is acknowledged, however this does not necessarily require a building of the height proposed.

The planning authority supports elements of additional height, particularly as the proposal comprises residential development. However, there are concerns regarding the design, scale and height. It is recommended that the height of the proposal is reduced by a minimum of 1- storey in order to ensure that the proposal integrates into the streetscape along Ardee Street.

### **Impact on adjoining residential amenity**

#### **Daylight, sunlight & overshadowing**

A Daylight, Sunlight and Overshadowing Study prepared by IES has been submitted. It includes a daylight analysis (Vertical Sky Component - VSC) and sunlight analysis (Annual Probable Sunlight Hours – APSH). It compares the impact of the proposed development with the indicative height of 6- 8 storeys development that was envisaged for the site under the expired Liberties LAP.

The planning authority noted that the overall impact of overshadowing can be classed as a minor adverse impact.



## **Assessment Of The Proposed Build-To-Rent Accommodation**

### **Residential Standards**

The mix complies with the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, DoHPLG, December 2018.

The submitted Housing Quality Assessment provides a schedule of accommodation which indicates that minimum floor areas are achieved for all units.

SPPR 4 of the Guidelines has a minimum 33% requirement for dual aspect units.

The submitted Housing Quality Assessment (HQA) advises that 47 no. apartments (35%) are dual aspect, in excess of the 33% requirement. A significant number of the proposed single aspect units are identified in the HQA as 'north-facing'. The applicant's response highlights that all north facing apartments exceed the minimum standards in terms of floor space. Those with a balcony provision also greatly exceed the minimum requirements. This is acceptable to the planning authority.

The Statement of Consistency notes that the proposed floor to ceiling heights of approximately 2.9m will be provided for all ground floor apartments and upper level floors being 2.65m thus, exceeding the requirements of the Apartment Guidelines.

The HQA identifies that a total of 55 no. apartments (41% of the proposed units) will benefit from private amenity space in the form of balconies. Notwithstanding the flexibility allowed for under the 'Sustainable Urban Housing: Apartment Design Guidelines', it is considered that just 41% units (55 out of 134) provided with private balconies is low for this scheme.

It is noted that the applicant has reduced the number of ground floor apartments along Ardee Street from three to two and introduced a 15 sqm private amenity space provision with landscaping. The planning authority query the appropriateness of ground floor apartments at this location where their private amenity spaces would directly adjoining a public street, roadside car parking spaces and a public road. There are concerns regarding a lack of privacy and residential amenity impacts by way of dust and noise. Furthermore, it is questionable as to whether the landscaping proposed would provide for adequate buffers in the interests of privacy and security.

In terms of Residents Services and Amenities, it is noted that additional space for the residents such as a 55 sqm games room is provided and the co-working area is 60 sqm. Together with the foyer area, it is considered that the proposed internal communal amenity space equates to 115sqm which is considered acceptable.

It is considered that the quantum and quality of the communal open space amenity and recreational areas provide for a suitable level of amenity

### **Public Open Space**

The proposal does not include for the provision of public open space. DCC Parks, Biodiversity & Landscape Services indicated that inner city areas of Dublin have a lower area of public open space per person compared to the city-wide area per person and it is preferable to improve the open space provision in this deficit area. It is recommended that the public open space requirement is provided to Brabazon Sq./Newmarket side of the site to enhance the public realm provision there. Parks, Biodiversity and Landscape Services object to the application due to the lack of provision of public open space in accordance with development plan standards.

### **Daylight, Sunlight & Overshadowing analysis**

94% of the tested rooms are achieving ADF values for Living/Kitchen/Dining spaces when assessed against a 2% ADF target. This increases to 96% when the results from the sample floors are extrapolated to account for all upper spaces within the development.

98% of the tested rooms are achieving ADF values above the 1.5% target for Living/Kitchen/Dining spaces. This increases to 98% when extrapolated to account for all upper spaces within the development. The analysis considers that a 1.5% average daylight factor is more appropriate given the inner-city infill nature of the site within a regeneration area, extensive road frontages and the requirement to provide balconies as private amenity spaces.

In terms of APSH, 147 no. points were tested with 68 no. points (46%) meeting the BRE guidelines in both annual and winter assessments. The applicant submits that the remaining main living room windows tested do not meet requirements due to a combination of orientation and the provision of balconies above windows. Therefore the results are to be expected on such an infill, regeneration site and is noted in the BS 8206-2:2008 standard.

The submitted Daylight, Sunlight and Overshadowing Study indicates that only the communal courtyard area does not meet this criteria, with all upper floor terraces comfortably meeting this standard. Accordingly, the applicant has advised that by discounting this area, the remaining 801sqm of roof terrace spaces at the upper floor levels, still meet the quantitative standards of the Apartment Guidelines.

### **Childcare**

The applicant submits that it is not anticipated that the proposed development would give rise to the need to provide a childcare facility on-site. This is due to the predominance of one-bedroom apartments within the scheme and the nature of the proposed development as specific BTR units, it is submitted that the proposed development will not generate the level of demand that would necessitate the provision of a childcare facility on-site.

### **Statement of Consistency**

The planning authority has considered the Statement of Consistency and is satisfied that the application is consistent with the relevant National, Regional and Local Policies.

### **Statement of Material Contravention**

The Statement of Material Contravention with the City Development Plan, submitted with this proposal is noted. The Material Contravention Statement refers to the Urban Development and Building Heights – Guidelines for Planning Authorities, December 2018.

### **Transport**

#### **Location and Transport Modes**

The site is bounded by Ardee Street to the west, Mill Street to the south and Newmarket to the north. The proposed development includes sections of setback at ground level which provides space around pedestrian access points as well as some minor improvements to the effective width of the footpath. The nearest bus stop is located directly opposite the proposed development on Ardee Street which provides an inbound service. The outbound service is also located on Ardee Street approximately 50 m from the proposed development. The bus stop is served by Bus Route 150 (Hawkins Street to Rossmore). Additional bus services are available 200 m north of the proposed development on Cork Street. The bus services provided on Cork Street include routes 27, 56A, 77A and 151. Bus route 27 provides the highest frequency of 10min during peak hours. Proposed improvements in public transport infrastructure and frequency are noted including Bus Connects' proposed Core Bus Corridor No. 9 located on Cork Street. The retention of the existing 150 bus service on Ardee Street, renamed Route 71 and 72, is also noted in the revised BusConnects Network proposals. The proposed development is approximately 1.3 km from the Harcourt Luas stop on the Luas Green Line connecting Broombridge in the northern city suburbs to Sandyford and Brides Glen in the southern suburbs. The proposed development is also approximately 1.1 km from the Fatima Luas stop on the Red Line connecting Saggart / Tallaght in the West to Connolly / The Point in the East. The availability of car share is noted on Newmarket (150 m) and The Coombe (300 m) as well as other sites in the vicinity. The station-less bike share operator Bleeper Bike serves the area of the proposed development with appropriate cycle stands within a 2min walk of the site suitable for parking public bikes. The nearest fixed Dublin Bikes stand is approximately 10min walk from the proposed development.

#### **Works in Public Domain**

The proposed development includes works to the public realm which include adjustments to the kerb line and the formalisation of 5 no. on-street public car parking spaces as well as the provision of a loading bay on Ardee Street. A letter of consent has been issued by the Environmental and Transportation Department of Dublin City Council.

The proposed works to the public realm do not impact the permitted Part 8 public realm improvement scheme (Reg. Ref. 2283/17) which is predominately located on Newmarket Square.

The improvements to the public realm around the proposed development are for the most part proposed within the public domain area, i.e. little or no building set back is proposed to improve the pedestrian environment. No part of the public footpath should be located within the private ownership of the site. In that regard, the applicant was requested to review the ground floor plan and provide a minimum 1.8m public footpath.

An adjustment to the proposed building line or proposed works on Ardee Street (car parking/loading bay) will be required to provide a minimum of 1.8 m public footpath in accordance with DCC standards. The provision of the minimum standard footpath width as outlined by DMURS not only serves the users of the proposed building, but also the wider adjacent area which is currently being developed and which will result in increased footfall in the area, including on Ardee Street. Therefore, it is recommended that a condition outlining the provision of an absolute minimum 1.8m wide public footpath which is to be taken in charge standards and not over sailed by the proposed building façade should be provided on Ardee Street, Mill Street and Newmarket Square.

It is noted that the proposed reconfiguration of the kerb line on Ardee Street as well as the formalisation of the on-street parking results in tighter corner radii and a narrower carriageway. The applicant has included the proposed reconfiguration of the Oscar Square and Ardee Street junction under permitted development Reg. Ref. 3266/20. The applicant has also indicated a number of uncontrolled crossing points on the streets within the red line boundary. It is noted that the opposite crossing point on Oscar Square and outlined Sweeney Corner are not included as they are outside the red line boundary.

Any proposed changes to the public roads, including junctions, footpaths, pedestrian crossing locations (dropped kerb and tactile paving etc.), loading bays and parking etc. and any areas proposed to be taken in charge are subject to final agreement with the Environment and Transportation Department of Dublin City Council. Works will have to accord with the Construction Standards for Roads and Street Works in Dublin City Council. Consultation with Dublin City Council.

It is noted that public lighting heads are fixed to the existing building façade. Any requirements by the Public Lighting section of Dublin City Council will also need to be addressed.

## **Access**

### **Pedestrian and cyclist**

Pedestrian and cyclist access to the city centre is to the east via St. Luke's Avenue and Patrick Street. Footpath provision bounding the site is narrow in places and ranges between 1.4m and over 3m wide. As noted above, local widening of footpaths surrounding the proposed development is proposed but do not provide 2m width. The problem of vehicles parking on, or partially on the footpath is apparent in the surrounding area. There are existing cycle lanes on St. Luke's Avenue as well as some other streets within the local road network.

The main pedestrian access to the residential element of the proposed development is via an inward opening doorway on Ardee Street which is setback from the back of the public footpath and an additional pedestrian access is proposed on Mill Street. The ground level commercial unit pedestrian access is located off Newmarket Square and are also setback from the back of the public footpath. The cyclist access point is located off Mill Street by way of an inward opening double door. Drawing P19-149D-3.1\_100 Proposed Ground Floor notes that 238 no. cycle spaces are proposed within the residential cycle store area with an additional 4 no. cycle spaces for commercial use accessed off Newmarket Square. The Accessibility and Walking Audit included within the Quality Audit report is noted.

### **Vehicular Entrance**

The proposed development does not propose to have any vehicular access. The existing vehicular access points are to be extinguished and the applicant should by way of condition remove any footpath dishing and drop kerbs and replace with the appropriate standard footpath and kerb layout as per Dublin City Council Specifications.

### **Service Access**

The proposed development includes the provision of a loading bay on Ardee Street and the Infrastructure Report notes that servicing of the proposed development will take place from the proposed loading bay. The exact layout and provision of on street public car parking and loading bays is subject to separate agreement with the Transport Advisory Group (TAG) of Dublin City Council in the event of a grant of permission.

There are two proposed waste storage areas located on the ground floor with the larger of the two accessed from Mill Street and the smaller waste storage area accessed from Newmarket Square. The applicant notes that servicing of the refuse bins is proposed to be carried out from Mill Street and 28 Newmarket Square with refuse bins taken directly from the storage areas by the refuse collection provider and notes that the practice of setting down on the street to service refuse waste is common within the city centre. The applicant has included correspondence from a refuse collection provider outlining that they carry out similar services in the Newmarket Area of Dublin 8. S

Service vehicle (refuse) swept path analysis drawings are noted.

The proposed substation on northern façade of the proposed development can be accessed directly from Newmarket Square.

## **Parking**

### **Cycle Parking**

In general the proposed resident cycle parking is considered acceptable in terms of quantity. However, the proposed double stack cycle parking system located within the ground level cycle store does not appear to provide sufficient space for users to manoeuvre within the bike store. An appropriate cycle parking system will need to be facilitated in order to comply with any recommended condition outlining the minimum quantum of cycling spaces required. There is existing public cycle parking within close proximity to the proposed development, namely within Newmarket Square as well as additional public spaces provided as part of the permitted Part VIII works to Newmarket.

The applicant has not outlined that electric charging facilities are provided within the resident cycle parking areas. Such facilities should be conditioned in the event consent is forthcoming.

### **Car parking**

The applicant does not propose to provide any car parking for the proposed development.

The application site is located on Ardee Street in the Liberties, which is in Parking Standards Area 1 of 29 Map J 'Strategic Transport and Parking Areas' Dublin City Development Plan 2016-2022. Table 16.1 outlines the maximum car parking standards for residential as 1 space per dwelling, which would result in a maximum requirement of 134 car spaces.

A controlled parking scheme such as a permit and pay & display scheme is located on Newmarket Square and Brabazon Street, but is not currently provided on Ardee Street, Oscar Square or Chamber Street. Uncontrolled car parking is present on the surrounding streets of the proposed development. It is considered that the location of the site and the presence of uncontrolled on-street parking on numerous surrounding streets could lead to further demand for on-street parking and would result in displacement of existing residential parking.

The Transportation Division raised concerns regarding parking provision but this division noted the location of the site, proximity to the city centre, cycle parking provision on site, the location of adjacent existing public car share facilities and the potential for further spaces within the Newmarket Square area as well as public transport links as outlined by the applicant as mitigation measures for the non-provision of car parking.

### **Residential Travel Plan/Mobility Management Plan**

The submitted Residential Travel Plan, proposed modal splits and various mitigation measures proposed to promote alternative modes of travel other than the car are noted. Mitigation measures such as the provision of cycle parking and other physical facilities have been outlined above, but the proposed RTP/MMP also outlines softer measures such as the implementation of a Welcome Travel Pack for residents and the appointment of a Residential Travel Plan manager for the scheme and the carrying out and monitoring annual residential travel surveys etc. In general, the contents and measures outlined in the proposed RTP/MMP are welcomed.

### **Construction Stage**

An Outline Construction Environmental Management Plan (CEMP) is noted. The plan estimates that the duration of the construction phase will be 18 – 24 months and during the peak construction period approximately 100 – 150 people will be employed on site. The plan notes that main construction access is proposed from either Ardee Street or Newmarket Square. The outline CEMP notes that loading is proposed to take place from Newmarket Square within a 'materials set down area'. Any such, proposals will be subject to written agreement and approval with the Environment and Transportation Department of Dublin City Council. The two potential site entrance points area outlined within the CEMP will also be subject to final written agreement and approval with the Environment and Transportation Department.

Due to the scale of permitted developments within the Newmarket Area and the resulting potential for cumulative construction effects in particular from cumulative construction traffic impacts, it is recommended that cumulative impacts and appropriate mitigation measures are considered in the final CEMP in the event consent is granted. In the event of a grant of permission, a detailed Construction Traffic Management Plan (CTMP) should be conditioned and all proposed site access points, constriction traffic routes and unloading/loading shall be agreed with the Environment and Transportation Department of Dublin City Council.

### **Conclusion & Recommendation**

On the basis of the information received, it is considered that the development as proposed is consistent with the relevant provisions of the Dublin City Development Plan 2016-2022. The planning authority submitted a Chief Executive report to An Bord Pleanála in accordance with the requirements of Section 8(5)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016 and recommended that An Bord Pleanála consider a grant of permission.

A list of 20 condition are included. These are mostly standard in nature. Conditions of note include:

No. 2 (A) *The proposed building at the corner of Newmarket and Ardee Street shall be reduced in height by removing one-storey to form an eight-storey building.*

*(B) The proposed ground floor residential units on Ardee Street shall be omitted and replaced with non-residential/commercial uses. The development shall not commence until revised plans, drawings and visual impact assessment showing the above amendments have been submitted to, and agreed in writing by the Planning Authority.*

*Reason: In the interests of visual amenity.*

No. 10 (a) refers to the payment of €4000 per residential unit as a contribution in lieu of public open space.

**Appendix C** ‘Letter to An Bord Pleanála regarding Development Contributions and Bond Conditions’:

This sets out that in the event planning permission is granted the following conditions be applied:

- A bond condition in respect of a development for two units or more.
- A condition requiring the payment of a contribution in lieu of the development not meeting the open space requirement.
- A Section 48 development contribution.
- A section 49 development contribution ( Luas Cross City Scheme)

#### **8.4 Inter-Departmental Reports**

**Transportation Planning Division:** No objection subject to conditions relating to a) details of 1.8m wide footpath that is not over sailed by building façade, located over basement or similar subterranean area, b) works to public junctions, pay & display parking spaces, loading bays etc, c) the extinguished vehicular access and removal of associated dishing and works to footpath, d) works to footpath at entrance, d) CEMP/CMTP, e) implementation of measures identified in the RTP/MMP, f) bicycle parking e) public lighting. g) cost incurred to be at expense of developer and h) compliance with Coe of Practice.

**Drainage Division:** No objection subject to conditions relating to a) compliance with Greater Dublin Regional Code of Practice for Drainage Works, b) verification of surface water sewers, c) connections, d) drained to separate foul and surface water system, e) basement drainage, f) attenuation, g) SuDs, h) surface water management strategy, i) outfall, j) upgrade of footpaths/gullies, k) demolition and protection of public surface water sewers/infrastructure.

**Parks, Biodiversity and Landscape Services:** Object to the application due to the lack of provision of public open space in accordance with development plan standards. List of recommend condition in the event of a grant of permission include: a) development contribution (€4000 per residential unit) in lieu of public open space, b) retain services of qualified Landscape Architect throughout the life of the site development works/implementation of landscaping scheme/ landscape completion report.



**Housing Section:** Noted applicant has engaged with the section and is aware of their obligations.

**Air Quality Monitoring & Noise Control Unit:** No objection subject to conditions relating to a) asbestos survey and b) compliance with Construction & Demolition Good Practice Guidelines, c) acoustics report (as further information), d) air and noise recommendations.

**Environment & Transportation Department – Waster Regulation & Enforcement Unit:** recommendations relate to: a) updated authorised waste collection permit, b) destination facilities, c) details of competent person, d)-details regarding ‘quantities’, e) waste dockets, f) contact details for site manager, g) crushing of concrete on site requires a waste facility permit, h) will take place on site and its disposal, g) laboratory testing of soils, h) invasive plant species survey, i) asbestos survey and j) waste logs.

### **City Archaeologist**

The site is located within the zone of archaeological potential for Recorded Monument and Place (RMP) DU018-040 (burial ground), which is subject to statutory protection under Section 12 of the National Monuments (Amendment) Act 1994. Further, the site is within a site of archaeological interest as defined in the Dublin City Development Plan 2016-22.

A report, titled Newmarket/ Ardee Street, Archaeological Desktop Report (November 2021) was submitted. This report notes that a historic lime kiln complex is depicted with the site boundaries on historic cartographic sources, the remains of which may survive at a subsurface level. Excavation to the immediate east of the subject site (Excavation Ref: 18E0757) recorded a mid- 17th century roadway, which is likely to continue into the proposed development area. These archaeological subsurface features may be impacted on by ground disturbance and the piling scheme associated with the development. The submitted report suggests archaeological test excavation as archaeological mitigation.

The Section concurs with the suggested mitigation as recommended in the report submitted (i.e. archaeological test excavation). The aim of this process is to ascertain the nature and extent of any archaeological deposits within the site boundary and to determine a strategy for its protection and/or mitigation. In the event of a Grant of Permission, it is the Archaeology Section’s recommendation that the site be archaeologically tested, following which a mitigation strategy should be agreed with the Planning Authority.

## 9.0 Prescribed Bodies

Pursuant to article 285(5)(a) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant was informed at Pre-Application Consultation stage that the following authorities should be notified in the event of the making of an application arising from this notification in accordance with section 8(1)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016: 1) Minister for Culture, Heritage and the Gaeltacht (Built Heritage and Nature Conservation). 2) Fáilte Ireland, 3) The Heritage Council, 4) An Taisce – The National Trust for Ireland, 5) Irish Water, 6) Transport Infrastructure Ireland and 7) National Transport Authority.

The following Prescribed Bodies have made a submission on the application:

### **Irish Water (IW):**

#### Water:

In order to accommodate the proposed connection to Irish Water network at the Premises, the following upgrade works will be required:

- Connection main – Approx. 25m of new 200mm ID pipe main to be laid to connect the site development to the newly laid 200mm ID main. Meter to be installed and linked up with telemetry.
- Upgrade main – Approx. 650m of new 200mm ID main to be laid to replace any existing 6" CI mains along the supply path, section of existing 125mm HPPE should be retained and a new 150mm should be laid to work in line with this existing main.
- Upgrade trunk main – Approx. 580m of new 450mm/500mm ID pipe required to replace the existing 16" and 18" CI.

Irish Water currently does not have any plans to extend or commence upgrade works to its network in this area should the applicant wish to progress they will be required to fund these upgrades. It is expected that these works will be in the public domain.

#### Wastewater:

Please note, the receiving sewer for this development is combined. The development must incorporate Sustainable Drainage Systems/ Attenuation in the management of stormwater and to reduce surface water inflow into the receiving combined sewer. Full details of these have to be agreed with LA Drainage Division.

#### Design Acceptance:

The applicant (including any designers/contractors or other related parties appointed by the applicant) is entirely responsible for the design and construction of all water and/or wastewater infrastructure within the Development redline boundary which is necessary to facilitate connection(s) from the boundary of the Development to Irish Water's network(s) (the "Self-Lay Works"), as reflected in the applicants Design Submission.

### **Transport Infrastructure Ireland (TII)**

The proposed development falls within an area set out in a Section 49 Levy scheme for Light Rail. The Section 49 scheme lists several exemptions where the levy does not apply. If the above application is successful and not exempt, as a condition of the grant, please include for the Section 49 Contribution Scheme Levy.

## **10.0 Planning Assessment**

The Board has received a planning application for a housing scheme under section 4(1) of the Planning and Development (Housing) Residential Tenancies Act 2016. My assessment focuses on the National Planning Framework, the Regional Economic and Spatial Strategy and all relevant Section 28 guidelines and policy context of the statutory Development Plan and has full regard to the Chief Executive's report, third party observations and submissions by Prescribed Bodies.

The assessment considers and addresses the following issues:

- Principle of Development, Quantum and Nature of Development
- Design Strategy
- Residential Standards for Future Occupiers.
- Potential Impact on Adjoining Properties/Lands.
- Traffic and Transportation
- Services & Drainage
- Ecology
- Part V
- Non-Residential Use

- Childcare
- Architectural Heritage
- Archaeology
- Other Matters
- Material Contravention
- Chief Executive Report

## **10.1 Principle of Development, Quantum and Nature of Development**

### **10.1.1 Context**

Having regard to the nature and scale of development proposed, namely an application for 134 Build to Rent (BTR) apartments and a retail/commercial unit located on lands for which residential development is permitted in principle under the zoning objective Z10, I am of the opinion that the proposed development falls within the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

Previous uses on the site are associated with the empty offices, warehouses/sheds and place of worship which are proposed to be demolished.

Observers have raised concerns regarding the principle of Build to Rent apartments at this location and the suitability of this type of tenure for the area.

### **10.1.2 Land Use Zoning:**

The site is located on lands which are the subject of Land Use Zoning Objective Z10 Inner Suburban and Inner-City Sustainable Mixed-Uses with a stated objective '*to protect, provide and improve residential amenities*'.

Permissible uses in 'Z10' areas include residential, childcare facility, office and restaurant. There is a requirement for 10% of the 'Z10' lands to be provided as meaningful public open space as part of their development proposals, although this can be addressed via contributions in lieu of a shortfall, if necessary. The indicative plot ratio for 'Z10' lands is stated as 2.0 to 3.0 and a 50% indicative site coverage is also provided for in the Development Plan.

Section 14.8.10 of the Development Plan addressing the 'inner suburban and inner-city sustainable mixed-use zone 10' states that the appropriate mix of uses for a given site should be influenced by the site location and other planning policies applicable to the associated area.

The non-residential element of the development is situated at ground level of the development and addresses the public realm along Ardee Street and Newmarket where substantial public realm improvement works are proposed. While I would accept that the proportion of non-residential floor space relative to residential floor space is limited, the development would introduce a retail/commercial use to the site, providing a mix of uses on site and the Development Plan does not specifically set out the extent of non-residential floor area to be provided or minimum criteria. Having regard to the foregoing I am satisfied that the mix of uses would be sustainable and acceptable, while being in accordance with the land-use zoning objectives for the site.

Having regard to the zoning objective on the site, those uses which are permitted in principle, I consider the principle of residential development consisting of Build to Rent apartments and a retail/commercial unit on this site is acceptable in principle subject to compliance with the relevant standards and other planning considerations which are addressed in this report.

### **10.1.3 Density**

The proposal is for 134 BTR apartments on a site with a nett area of c.0.32.hectares, therefore a density of c.446.8 units per hectare is proposed.

The current Dublin City Development Plan states the Council will promote sustainable residential densities in accordance with the Guidelines on Sustainable Residential Development in Urban Areas. With regard to plot ratio, I note it is indicated to be 5.6 and site coverage is 50%. The Dublin City Development plan sets out an indicative plot ratio for this site of 2.0-3.0, a higher plot ratio may be considered adjoining major public transport termini and corridors, which is applicable to this site. Site coverage indicated in the Development Plan is 50% for Z10 lands. Observers raised issue that the proposed density materially contravenes the Development Plan. The current Dublin City Development Plan does not set upper limits on densities and refers to plot ratio and site coverage. The planning authority considered that the subject property represents an underutilised site and therefore a higher plot ratio is deemed acceptable in this instance, subject to high quality design and appropriate levels of residential amenity both internal and external to the application site.

The Guidelines on Sustainable Residential Development in Urban Areas (SRDUA) states that for sites located within a public transport corridor, it is recognised that to maximise the return on this investment, it is important that land use planning underpins the efficiency of public transport services by sustainable settlement patterns, including higher densities. The guidelines state that minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, ie within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station.

Policy at national, regional and local level seeks to encourage higher densities in key locations. It is Government and regional policy to increase compact growth within specified areas and increase residential density. The RSES requires that all future development within the metropolitan area be planned in a manner that facilitates sustainable transport patterns and is focused on increasing modal share of active and public transport modes. The MASP identifies strategic residential and employment corridors along key public transport corridors existing and planned. The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), Sustainable Urban Housing: Design Standards for New Apartments (2020) and the Urban Development and Building Heights Guidelines (2018) provide for increased residential density along public transport corridors. The Sustainable Residential Development in Urban Areas Guidelines in particular support consolidated higher density developments within existing or planned public transport corridors (within 500m walking distance of a bus stop and 1km of a light rail stop/station), where higher densities with minimum net densities of 50 dwellings per hectare are supported, subject to appropriate design and amenity standards, in order to maximise the return on public transport investment.

Objectives 4, 13, 33 and 35 of the National Planning Framework, RPO10, RPO34 and RPO35 of the Regional Spatial and Economic Strategy 2019-2031 and SPPR1 and SSPR2 of the Urban Development and Building Heights Guidelines, all support higher density developments in appropriate locations, to avoid the trend towards predominantly low-density commuter-driven developments.

Based on the information available and having inspected the site and area I consider that the site is served by a number of high frequency bus services within the immediate surrounds of the site. The nearest bus stop is located directly opposite the proposed development on Adree Street which provides an inbound service. The outbound service is also located on Ardee Street approximately 50m from the proposed development. The bus stop is served by Bus Route 150 (Hawkins Street to Rossmore). Additional bus services are available c.200m north of the proposed development on Cork Street. The bus services provided on Cork Street include routes 27, 56A, 77A and 151. Bus route 27 provides the highest frequency of 10min during peak hours.

Proposed improvements in public transport infrastructure and frequency include Bus Connects' proposed Core Bus Corridor No. 9 located on Cork Street. The retention of the existing 150 bus service on Ardee Street, renamed Route 71 and 72, is also included in the BusConnects Network proposals.

The proposed development is c.1.3km from the Harcourt Luas stop on the Luas Green Line connecting Broombridge in the northern city suburbs to Sandyford and Brides Glen in the southern suburbs. The proposed development is also c.1.1km from the Fatima Luas stop on the Red Line connecting Saggart/Tallaght in the West to Connolly / The Point in the East. The availability of car share is noted on inter alia Newmarket (c.150m) and The Coombe (c.300m). The station-less bike share operator Bleeper Bike serves the area of the proposed development with appropriate cycle stands within a 2min walk of the site suitable for parking public bikes. The nearest fixed Dublin Bikes stand is approximately 10min walk from the proposed development.

Having regard to the foregoing, the site is in my opinion a 'Central and/or Accessible Urban Location' as defined under Section 2.4 of the Apartment Guidelines 2020 and is a suitable location for higher density residential development. I am satisfied that the site is well placed to accommodate high density residential development given its proximity to high capacity public transport, within walking distance of significant employment and within short commute (walking, cycling, Luas, bus) of a range of employment options, and within walking distance of a range of services and amenities. I am of the opinion that the delivery of residential development on this prime, underutilised, serviced site, in a compact form comprising higher density units would be consistent with policies and intended outcomes of current Government policy, specifically the NPF, which looks to secure more compact and sustainable urban development with at least half of new homes within Ireland's cities to be provided within the existing urban envelope (Objective 3b). In terms of local policy, Dublin City Development Plan states the council will promote sustainable residential densities in accordance with the Guidelines on Sustainable Residential Development in Urban Areas (as considered above). The overall acceptability of the proposed density subject to appropriate design and amenity standards, which are addressed in the relevant sections of this report.

Having considered the applicant's submission, observers submissions and those of the planning authority, as well as local, regional and national policy, the site is within the MASP, close to public transport and in line with s.28 guidance on residential density, I am satisfied that the proposed quantum and density of development is appropriate in this instance having regard to national policy, the relatively recent permissions in the vicinity, the area's changing context, the site's size and proximity to public transport and is not contrary to the provisions of the development plan in respect of density or quantum. The planning authority has not raised concerns relating to this matter.

A Material Contravention statement regarding residential density, plot ratio and site coverage contained in the Dublin City Development Plan 2016-2022 was submitted. I do not consider it a material contravention of the current City Development Plan.

#### **10.1.4 Built to Rent**

The crux of the submission received from Cllr. Devine relates to the BTR model and its suitability to deliver housing and meet the needs of local community. John Conway & the Louth Environmental Group also referred to the BTR model in their submission. Both submissions noted that the draft Dublin City Plan 2022-2028 includes provisions to address BTR. The Chief Executive report raised no objections to the provision of BTR apartments at this location.

The proposed development includes 134 no. Build to Rent apartments. Section 5 of the Sustainable Urban Housing: Design Standards for New Apartments, 2020 provides guidance on Build-to-Rent (BTR). The guidelines define BTR as “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”. These schemes have specific distinct characteristics which are of relevance to the planning assessment. The ownership and management of such a scheme is usually carried out by a single entity.

The public notices refer to the scheme that includes 134 no. ‘Build-to-Rent’ apartments and a draft deed of covenant indicates that the applicant is willing to accept a condition requiring that the BTR residential units remain in use as BTR accommodation, that no individual residential unit within the development be disposed of to any third party for a period of 15 years only from the date of grant of permission. I consider that the matter of the covenant be further dealt with by means of condition if the Board considers granting permission. The Guidelines also specify that no individual residential units may be sold or rented separately, during that period. While submissions consider there is an over saturation of this type of tenure in the area and that it is inappropriate location for Build to Rent.

The site is highly accessible by bus and is within proximate distances of a LUAS as well as being within walking distance of a range of city centre services and amenities and connected to a large range of employers within a short commuting distance. I am satisfied that a Built to Rent scheme is suitable and justifiable at this location. I have considered the concerns raised in the submissions received, however I am of the opinion that the proposal will provide a viable housing solution to households where home-ownership may not be a priority and in an area where traditionally the main housing provision is traditional family type two storey dwellings.

The proposed residential type and tenure provides a greater choice for people in the rental sector, one of the pillars of Rebuilding Ireland and I am satisfied in this regard.



Concerns raised in submissions in relation to the negative impact of Build to Rent developments on established communities is not substantiated and such a scheme will not necessarily attract a transient population. Based on the information submitted I have no reason to believe there will be significant issues with the long-term management of the development. I consider that the proposed Build to Rent accommodation overall is acceptable at this location and is in line with the overarching national aims to increase housing stock, including in the rental sector, as set out in various policy documents, including inter alia Rebuilding Ireland – Action Plan for Housing and Homelessness (2016)

### 10.1.5 Unit Mix

Observers raised issues that the proposed unit mix would materially contravene the provisions of the development plan/local area plan.

Section 16.10.1 of the Dublin City Development Plan, Mix of Residential Units, states that each apartment development of 15 units or more shall contain:

- A maximum of 25-30% one-bedroom units.
- A minimum of 15% three- or more bedroom units.

I refer the Board to section 3 of this report where I have set out in detail the proposed units mix and break down per block.

When examined in combination with the studio units (which also contain one bed), one bed comprise c.72.3% of the proposed units. This figure is in excess of the 25% -30% standard for one-bed units, as set out in operative City Development Plan. I also refer the Board to the percentage of proposed three-bed units. The standard set out in the operative City Development Plan seeks 15% three-bed units in any such development, the current proposal includes 0%.

The applicants have addressed this matter within the submitted Material Contravention Statement. I note the non-compliance with this standard of the operative City Development Plan. However, I do not consider this to be a material contravention of the Plan. I have examined the provisions of section 16.10.1 of the operative City Plan and consider these to be standards. I note Policy QH1 of the operative City Development Plan which seeks 'to have regard to the DEHLG Guidelines on 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007), 'Delivering Homes Sustaining Communities – Statement on Housing Policy' (2007), 'Sustainable Urban Housing: Design Standards for New Apartments' (2015) and 'Sustainable Residential Development in Urban Areas' and the accompanying 'Urban Design Manual: A Best Practice Guide' (2009)'. This policy seeks to have regard to these aforementioned guidelines.

Furthermore, since the adoption of the Dublin City Development Plan 2016-2022, the Sustainable Urban Housing: Design Standards for New Apartments (2015) have been updated (December 2020). I note that the planning authority in their Chief Executive Report continually refer to the updated 2020 guidelines. One of the main differences between the two guidance documents relates to, inter alia, build to rent developments and associated “Specific Planning Policy Requirements” (SPPRs). The ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (December 2020) contains SPPRs in relation to build-to rent developments, namely SPPR7 and SPPR8. Specifically, in relation to dwelling mix requirements for build-to-rent developments, I note SPPR8 (i), which I acknowledge takes precedence over any conflicting policies and objectives of Development Plans. SPPR8 (i) of the Apartment Guidelines (2020) states that no restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise. It is noted that such SPPRs, which allow for flexibility in relation to build to-rent developments, were not included in the 2015 guidelines. However, this form of housing tenure was included for in the City Development Plan. I also note that the planning authority has not raised issue with the unit mix nor material contravention of the Plan relating to this matter.

In my opinion the proposed development will provide increased diversification of housing typology in the area which at present comprises predominately two storey dwelling houses and would in my opinion improve the extent to which it meets the various housing needs of the community. I, therefore, consider it reasonable to apply the updated section 28 guidance in this regard, which allows for flexibility in relation to build-to-rent developments in terms of unit mix.

I also draw the Board attention to the current City Development Plan which allows for some relaxations/flexibility in terms of unit mix in certain circumstances including for BTR schemes and I refer the Board to section 16.10.1 in this regard. In particular, I note the following *‘The above mix of unit types will not apply to managed ‘build-to-let’ apartment schemes for mobile workers where up to 42-50% of the total units may be in the form of one-bed or studio units. Communal facilities such as common rooms, gyms, laundry rooms etc. will be encouraged within such developments. This provision only applies to long-term purpose-built managed schemes of over 50 units, developed under the ‘build-to-let’ model and located within 500 m (walking distance) of centres of employment or adjoining major employment sites. Centres of employment are identified in Fig W Housing Strategy Appendix 2A.* I note that while the site is not identified in Figure W, I consider the application site to be one such area. The proposal for a build-to-rent scheme, catering to amongst others, mobile workers. The percentage of studio and one-bed units is above the 42%-50% threshold. The proposed development is a long-term, purpose-built managed scheme of over 50 units (134 residential units in total or 132 as per my recommend amendments in this report). It is being developed under the BTR model and this has been advertised in the public notices. The site is close to centres of employment and

major employment sites. It is proximate to good public transport facilities and good cycle and pedestrian connectivity to the city centre. The site is located within an established area of the inner city, proximate to numerous employment, educational, cultural, ecclesiastical and recreational uses.

The Urban Design Manual, in particular Criteria 03 and 04, 'Inclusivity' and 'Variety', are noted. This puts forward the idea that in larger developments, the overall mix should be selected to create a mixed neighbourhood that can support a variety of people through all stage of their lives. Presently, the wider area could be described as a mixed neighbourhood and I am of the opinion that the proposed development will contribute positively to that. I also fully acknowledge changing household sizes and note that the NPF states that seven out of ten households in the State consist of three people or less and this figure is expected to decline to approximately 2.5 persons per household by 2040. Again, I reiterate that as this is a build-to-rent development, the provisions of SPPR 8(i) of the Apartment Guidelines apply, which state that that no restrictions on dwelling mix shall apply.

Having regard to all of the above, I consider that the proposed unit mix is acceptable in this instance given the locational context of the site, the established nature of the area, together with national guidance in this regard. I fully acknowledge changing household sizes. As stated in the National Planning Framework, seven out of ten households in the State consist of three people or less and this figure is expected to decline to approximately 2.5 persons per household by 2040. The proposed development in terms of unit mix would add greatly to the availability of studio and one bedroom apartments in an area of the city characterised by conventional housing stock comprised of houses, student accommodation and BTR developments.

I have no information before me to believe that the mix of units would lead to the creation of a transient or unsustainable community. While the unit mix may exceed a standard in the operative City Development Plan, I do not consider that this constitutes a material contravention of the Plan. The proposal broadly complies with section 16.10.1 of the Plan and meets the standards of the aforementioned Sustainable Urban Housing: Design Standards for New Apartments (2020). Having regard to the foregoing I consider the proposed unit mix acceptable.

## **10.2 Design Strategy**

### **10.2.1 Height**

The proposed development comprises one block ranging in height from 6-7-9 storeys with a maximum height of 31.3m.

The immediate area is one in transition with mixed form of urban development and regeneration context which gives rise to a mix of land uses. There are two storey semi-detached and terraced dwellings located to the west and south-west of the site. To the east is the Teelings Distillery, an ESB substation and the Dublin Liberties Distillery, all industrial style buildings with a height that equates to 2-3 storeys. Recent insertions in to the built form are located to the north and east. Newmarket Square and its immediate surroundings have been undergoing redevelopment through regeneration projects, many of which are currently under construction. To the south, on the southern side of Mill Street, is a mixed use Student Accommodation, and mixed use development of 6 storeys, with setback 7th storey. On Mill Street the Aloft Hotel has a height of 8 storeys with top two floors set back. To the north, on Newmarket, the former IDA site is being redeveloped for hotel, retail and residential use (BTR apartments) with heights of 6-8 storeys on Newmarket and 13 storeys further north along Cork Street. At Newmarket Square West/Ardee Street to the north, a mixed use development is currently under construction with a height of 4-5 storeys. The area will be further enhanced with the delivery of the public realm works (part 8) for the Newmarket Area with permitted developments providing active street frontage to this area.

Third parties and elected representatives have raised concerns in relation to suitability of the height and scale of the development relative to the two storey dwellings along Ardee Street and its streetscape. It is contended that the submitted height does not respect the existing built environment. It is submitted that the proposed development breaches the height guidelines in the Dublin City Development Plan and is a material contravention of same.

Observer submissions also raise concerns with regards the impacts of the proposal on the visual amenity of the area and that it is out of character with the existing built environment, in particular along Ardee Street. These concerns are interlinked with concerns regarding the height, scale and massing of the proposal. There is a general consensus amongst third party observers that the proposal would negatively impact on the visual amenity of the area. The planning authority have recommended that the development be granted permission but included a condition that a floor be omitted from the 9 storey element in order to integrate better with development along Ardee Street

The applicant has submitted that the height and distribution of the development's block massing ensures that it delivers a progressive proposition, providing a respectful transition in height that does not impose upon or overbear adjacent existing residential areas to the north and west and the Conservation Area to the north. It is submitted that the overall approach to height has been to place the lower element along Ardee Street and addressing Mill Street.i.e in locations which are most sensitive, and to place the higher element on the corner of Ardee Street and Newmarket Square where it would have a greater absorption capacity for scale and height.

Section 16.7 of the Dublin City Development Plan 2016-2022 has regard to 'Building Height in a Sustainable City'. The Development Plan defines Dublin City as 'low-rise', with the exception of those areas specifically designated as 'mid-rise' or 'high-rise'. The application site falls within the 'low-rise' area. Table 2.0 sets out heights for 'low-rise' in the Inner City as up to 24m maximum building height for residential and commercial development within a Rail hub. For development in the outer city the maximum height of commercial/residential is 16 metres.

The proposed height of 9 storeys (31.3m) exceeds the height set out in section 16.7. A Material Contravention Statement is submitted with the application in which the applicant seeks to justify the material contravention of the provisions of the Dublin City Development Plan 2016-2022 in respect of building heights. I address this in section 10.14.

The Urban Development and Building Height Guidelines provide clear criteria to be applied when assessing applications for increased height. The Guidelines describe the need to move away from blanket height restrictions and that within appropriate locations, increased height will be acceptable even where established heights in the area are lower in comparison. Having regard to the Urban Development and Building Heights Guidelines, 2018, I note that specific assessments were undertaken including Townscape and Visual Impact Assessment, CGIs and daylight/sunlight and overshadowing analysis. Applying section 3.2 of the Building Height Guidelines I consider the following:

**At the scale of the relevant city/town:** This relates to the accessibility of the site by public transport. The site is located in a highly accessible location c.150m from St. Luke's Avenue (extension of Cork Street) and is readily accessible to public transport including the Cork Street bus corridor, adjacent to the site and the Clanbrassil Street bus corridor. The site is also within walking distance of the LUAS Red Line 15 (Fatima Stop) and the Luas Green Line (St. Stephen's Green stop). Cork Street/St. Luke's Avenue forms part of Bus Connects Route 9 Greenhills to City Centre, which will see bus routes consolidated and frequency increased. The proposed Metro Link at St Stephen's Green is within walking distance. In the immediate locality, the Teeling Distillery, Hotels, Weaver Park, St. Patricks Park provide a range of employment opportunities, amenities and facilities for residents of the area.

**At the scale of district/neighbourhood/street:** This relates to the character of the area in which the development is located. The site while located in the Newmarket Conservation Area, it is not an architectural conservation area or contains or immediately adjoin any protected structures. The proposed increase in height is focused on the corner of Ardee Street/Newmarket Square with the lower element along Ardee Street and Mill Street. The area is a busy and robust environment, characterised by a range of architectural styles and periods. No harm would result to the character of the road with the proposed limited increase in height on the application site. Newmarket, Ardee Street, Mill Street and surrounds are characterised by a mixture of heights and scale and is an area underdoing signification redevelopment and transition and while the proposed development represents a change in scale, height across the site is stepped to have regarding to existing and permitted heights. The use of material and finishes to the elevations contributes to breaking down the overall mass of the proposed development. CGIs and 3D imagery of the proposed development, alongside a landscape and visual impact assessment, have also been submitted with the application and have assisted in my assessment of the proposal. Overall, I consider the design and massing of the development appropriate for the location. The development of the site would bring into use a zoned serviced site that is underutilised at present at this prime location.

**At the scale of the site/building:** The proposal includes new public realm, active frontages along Newmarket Square and fenestration that will passively survey the public roads. The proposed development will improve the street frontage along both Newmarket, Ardees Street and Mill Street consolidating the urban fabric for this development block. There are no monolithic facades included, with all elevations featuring fenestration in a sympathetic arrangement to avoid overlooking. The proposal includes new public realm, active frontages and fenestration that will passively survey surrounding streets. It will contribute to the legibility of the area, by establishing a positive addition to the streetscape. The addition of build to rent apartments will contribute to the unit mix and tenure at the location. Residential Amenities are addressed in section 10.3 and 10.4. Sunlight and daylight consideration are addressed in section 10.3.3 and 10.4.4 Flood Risk Assessment has been carried out and this is addressed in section 10.5.

Having regard to the considerations above, I consider that the proposal in principle for a 6 to 9 storey building at this location is acceptable in terms of height. I consider the height proposed to be in keeping with national policy in this regard. I note the policies and objectives within Rebuilding Ireland – The Government’s Action Plan on Housing and Homelessness and the National Planning Framework – Ireland 2040 which fully support and reinforce the need for urban infill residential development such as that proposed on sites in close proximity to quality public transport routes and within existing urban areas. I consider this to be one such site. The NPF also signals a shift in Government policy towards securing more compact and sustainable urban development and recognises that a more compact urban form, facilitated through well designed higher density development is required. I am also cognisant of the Urban Development and Building Heights, Guidelines for Planning Authorities (2018) which sets out the requirements for considering increased building height in various locations but principally, inter alia, in urban and city centre locations and suburban and wider town locations. Overall, I am of the view that having regard local and national guidance, the context of the site in an accessible location which is undergoing significant redevelopment, the proposed height is acceptable in principle subject to further assessment pertaining to impact on the receiving environment.

I am of the view that the proposed development does satisfy the criteria described in section 3.2 of the Building Height Guidelines in particular when assessed at the scale of district/neighbourhood/street.

I draw the attention of the Bord to the fact that the applicant considers the proposal to represent a material contravention in relation to height and has, in my opinion, adequately addressed the matter within the submitted Material Contravention Statement. The planning authority also considers the proposal to present a material contravention of the operative County Development Plan in relation to height. I too consider that the proposal represents a material contravention in relation to height. I address material contravention in section 10.14 of this report.

Having regard to all of the above, I am satisfied in this instance that the applicant has complied with the requirements of section 3.2 of the Building Height Guidelines to justify that the Board grant of permission in this instance and invoke section 37(2)(b) of the of the Planning and Development Act 2000, as amended.

The planning authority considers that the proposed building height should aim to integrate into the streetscape along Ardee Street. The requirement to mark the entrance onto Newmarket Square is acknowledged, however the planning authority is of the view that this does not necessarily require a building of the height proposed. And recommended a reduction in height of the proposal by a minimum of 1 storey in order to ensure that the proposal integrates into the streetscape along Ardee Street. I do not consider that omission of a floor along Ardee Street is warranted. The proposed height at this location is 9 storeys, it forms the corner and addresses the entrance to Newmarket where a Part 8 in in place for the development of Newmarket Square. I consider the proposed height of 9 storeys at this point appropriate and integrates with the evolving streetscape along Ardee Street, in my opinion.

### **10.2.2 Scale & Massing**

The site is located in The Liberties area of Dublin city centre which is undergoing significant regeneration with a number of sites in the vicinity being developed for residential, student accommodation and commercial purposes. The introduction of a BTR scheme at this location will contribute to the tenure and demographic mix in the area. To the east of the site along Newmarket is Teelings Distillery, along Mill Street is The Liberties Distillery along with hotels in the vicinity are assisting in promoting the area for tourism. The area also accommodates student accommodation and residential schemes, The proposed development will significantly enhance the quality of the streetscape and animation at street level with ground floor uses opening onto Newmarket Square. Public realm improvement are also proposed which I address in section 10.5.

Observer submissions highlight concerns that the proposed development is overbearing and would have an adverse impact of the visual amenities of the area. I have inspected the site and surrounding area and I agree with observers that the blocks will be visible to residents in the vicinity. The closest dwellings front onto Ardee Street and Chambers Road.

The issues of height, form, bulk of the proposal are inter-related and in effect relate to the overall scale and massing of a proposal. It is the sum of all these parts that, amongst other assessments, determines the appropriateness or otherwise of the development before the Board. I am generally satisfied that the application site can accommodate the proposed height, scale and massing which is in keeping with the emerging urban grain at this location.



In my opinion the applicants have had regard to improving the public realm, streetscape and connectivity of the area and have presented a development with appropriate transitions in scale and massing with heights stepped to offer a degree of transition with adjoining properties. There is no doubt any development of this site will bring a change to the character and context of the area, I am of the view that this is in keeping with the transitioning built environment that is taking place in the immediate vicinity of the site, a piece of the jigsaw so to speak which will address the corner of Ardee Street and Newmarket Square. I consider the proposal to be in compliance Policy SC25 of the Dublin City Development Plan which seeks to promote development which incorporates exemplary standards of high-quality, sustainable and inclusive urban design, urban form and architecture befitting the city's environment and heritage and its diverse range of locally distinctive neighbourhoods, such that they positively contribute to the city's built and natural environments

I have inspected the site and surrounding area and have examined the Townscape & Visual Appraisal Report and the submitted photomontages and all other drawings and documents and note that it is inevitable that any higher density development at this site is likely to contrast with surrounding development. The wider visual impacts in my opinion will not detract from the Newmarket Conservation Area.

The scheme while contemporary in approach pays homage to the industrial architectural of the area. I am satisfied that there is a clear I consider the massing, height and proposed finishes and materials acceptable. The massing is well considered with appropriate setbacks. Notwithstanding the issue of Material Contravention which is addressed in section 10.14 the height of the building while higher than that previous granted (max. of 9 storeys) is proportionate to the scale of the site and the area. High quality materials and finishes are proposed throughout the development and the development will significantly enhance the public realm. Internally the proposed development offers a variety of communal facilities and amenities which are addressed in detail in section 10.3.

On balance I consider in terms of design, height, scale and massing that that the proposed development will assimilate well with the emerging pattern of development in this area in transition and is an appropriate location for a building of this height. I am also satisfied with the information before me with regards to the issue of treatment of public realm and landscaping and I note a high quality scheme is proposed in this regard.

I have examined all the documentation before me and I acknowledge that the proposal will result in a change in outlook as the site changes from low rise, brownfield, underutilised lands to a site accommodating development of the nature and scale proposed.

### 10.2.3 Design, Materials and Finishes

The proposed development seeks permission to demolish the existing buildings on site and to construct development comprising 1 no. BTR apartment blocks of 6 to 9 storeys in height which will form the corner of Ardee Street/Newmarket/Mill Street. Works to public realm are proposed along Ardee Street/Mill Street and Newmarket

The applicant is proposing a contemporary intervention in an area traditionally characterised by industrial buildings and two storey houses. The built environment contains a wide variety of height, designs, scale and massing. Ranging from 2 storey terraced houses to a development of varying heights currently under construction. The proposed design seeks to introduce a new element to this disused site at a prominent location within the inner city. The applicant has submitted that the area is one in transition and therefore can accommodate different designs and styles when seeking to introduce new elements to the built environment.

Section 16.2.1 of the Development Plan addressing 'Design Principles', seeks to ensure that development responds to the established character of an area, including building lines and the public realm.

A Townscape and Visual Impact Assessment (TVIA), a booklet of Verified Views and CGIs prepared by suitably qualified practitioners, as well as contextual elevations and sections accompanied the application, which illustrate the proposed development within its current context. An Architectural Design Statement, Computer Generated Images (CGIs) and Landscape and Visual Appraisal accompanied the application, which detail and illustrate the proposed development in the context of the existing and proposed built environment.

An Architectural Design Statement submitted with the application sets out that the proposed development wraps around a prominent corner and with a presence on Newmarket Square and a longer facade to Ardee Street, the design is articulated into 3 distinct languages with a change at the corner of Newmarket / Ardee Street in order to break down the mass and create interest. The facades would introduce two brick tones to the city block, final details to be agreed with the planning authority. I consider the principle of different brick tones acceptable. The quality of the materials used will have an impact on the quality of the end product as such the final bricks to be used should be agreed prior to the commencement of development which is a matter that can be appropriately addressed by condition should the Board consider granting permission.

I have reviewed the information on file, I consider given the scale and massing of the overall development and the context of the site that the proposed materials and finishes assist in assimilating the proposed development into its surrounds. I consider the Design Strategy and materials proposed area appropriate and assist in promoting the scale of development at this location.

The Apartment Guidelines require the preparation of a Building Lifecycle Report regarding the long-term management and maintenance of apartments. Such a report has been supplied with the planning application.

Having regard to the foregoing I consider the proposed development appropriate at this location and I am of the view that the development has been designed to be respectful of the character of the area and is an appropriate design intervention at this location, in my opinion.

#### **10.2.4 Layout & Open Space**

The proposed building occupies the bulk of the site, with amenity areas arranged at podium and roof top levels. The planning authority have not raised concerns regarding the arrangement of the block on the site which as outlined above creates a new active frontage that addresses Newmarket Square where the proposed commercial unit is located at ground floor level. Passive surveillance of Ardee Street and Mill Street is provided through the location of shared communal areas and uses at ground floor level. This will be further augmented through the provision of additional areas in lieu of the residential units which I have recommended be omitted (refer to section 10.3 of this report).

Section 16.10.3 of the current Development Plan states that 'the design and quality of public open space is particularly important in higher density areas'. There is a requirement in the Development Plan for 10% of 'Z10-zoned' lands to be provided as meaningful public open space in development proposals. No public open space is proposed as part of the current proposal before the Board.

The report from the Parks, Biodiversity and Landscape Services to the Chief Executive concluded that the proposed development is acceptable and recommended that a condition be attached requiring the payment of a development contribution in lieu of public open space.

I note that the Development Plan does allow for the provision of public open space to be met via financial contributions in lieu of the shortfall in space, which the Planning Authority has requested via the attachment of a suitably worded condition in the event of a permission for the development. Given the site context in close proximity of Weaver Park and St. Patricks Park, the lack of public open space proposed on site and the Development Plan provisions, I am satisfied that a contribution in lieu of the shortfall in open space would be necessary and reasonable as a condition in the event of a permission and the proposed open space provision would not contravene the policies of the Development Plan.

A Material Contravention statement regarding open space provision contained in the Dublin City Development Plan 2016-2022 was submitted. I do not consider it a material contravention of the current County Development Plan.

I address provision and quality of communal and private open space in section 10.3 below.

### **10.3 Residential Standards for future occupier**

#### **10.3.1 Standard of Accommodation**

The development is for BTR apartments as such the Sustainable Housing: Design Standards for New Apartments 2020 has a bearing on the design and minimum floor areas associated with the apartments. In this context the Guidelines set out Special Planning Policy Requirements (SPPRs) that must be complied with where relevant. SPPR 7 and SPPR8 refer specifically to BTR developments.

It is stated that 35% of the units are designed to be dual aspect, SPPR 4 requires that a minimum of 50% dual aspect apartments are required in urban areas. But this may be reduced to a minimum of 33% in certain circumstance where it is necessary to ensure good street frontage and subject to high quality design, usually on inner urban sites, near city or town centres. Given the context and location of the site, I am satisfied that percentage of dual aspect is acceptable and exceeds the minimum requirement. Given the location of the site in an inner city location and with blocks orientated to maximise easterly and westerly aspects, where the proposed development exceeds the 33% requirement acknowledged by the planning authority as suitable in this instance, I consider the level of dual aspect provided acceptable.

Number of units per core is raised in the Material Contravention Statement in terms of compliance with the Development Plan Standards. I do not consider this a material contravention and note the Plan reference in general to compliance with section 28 Guidelines.

A schedule of compliance with the Apartment Guidelines accompanied the application confirming required apartment sizes, which I note and consider reasonable. SPPR 8 removes restrictions, for BTR proposals, on housing mix and provides lower standards for parking, private amenity space, 10% exceedance for spaces and lower units per core, although I note the proposed scheme complies with the standards.

Section 16.10.1 set out Unit Floor Areas, Table 3.2 of the current City Development Plan sets out minimal overall apartment gross floor areas which includes a minimum floor area of 40 sq.m for studio units. The Plan also requires that the majority of apartments in a proposed scheme of 100 units or more must exceed the minimum floor area standard by at least 10%. The Apartment Guidelines (2020) require minimum floor areas of 37sq.m for a studio and SPPR 8 states that the requirement that a majority of apartments exceed the minimum floor area standards by 10% shall not apply to BTR schemes.

The proposed apartments have been designed to comply with the 2020 Sustainable Urban House: Design Standards for New Apartments and the proposed studio unit (c.43sq.m) exceeds the minimum thresholds for unit size outlined in the current Development Plan. Third parties raised the issue of material contravention, I note that the Planning Authority have not raised the issue of material contravention in this regard. The applicant has addressed this in the Material Contravention Statement submitted. And also the matter of 2 bed units, where the Plan has only referred to 2 bed (4 person) units requiring a GFA of 73sq.m. The current proposal includes 2 bed (3 person apartments) with proposed GFA of c.63 sq.m as required under the Apartment Guidelines. While some of the apartments (7no.2bed (3 person) apartments) may not comply with the standards set out in the current Dublin City Development, I do not consider the non-compliance in a limited number of instances with a limited number of standards is a material contravention of the City Development Plan. Overall I consider the proposed apartments acceptable and in accordance with the requirements of the 2020 Apartment Guidelines.

The current Development Plan also requires that the majority of all apartments in a proposed scheme of 100 units or more must exceed the minimum floor area standard by at least 10% (studio apartments must be included in the total but are not calculable as units that exceed the minimum). SPPR 8 (iv) removes this requirement. The applicant has stated that c. 68% of the proposed units exceed minimum prescribed floorspace standards.

While some of the apartments may not comply with the requirement set out in the current Dublin City Development, I do not consider the non-compliance in a limited number of instances with a limited number of standards is a material contravention of the City Development Plan. Overall I consider the proposed apartments acceptable and in accordance with the requirements of the 2020 Apartment Guidelines

I note that the application does not include a Site Specific BTR Management Plan or similar. Notwithstanding I am satisfied that having regard to the submitted covenant that the development will be run by a Management Company to manage the estate and common areas of the development and sets out a structure to ensure the scheme is maintained to a high level and that this can be required by condition.

The Planning Authority queried the appropriateness of ground floor apartments at this location where their private amenity spaces would directly adjoin a public street, roadside car parking spaces and a public road. There are concerns regarding a lack of privacy and residential amenity impacts by way of dust and noise. Furthermore, it is questionable as to whether the landscaping proposed would provide for adequate buffers in the interests of privacy and security. I note the concerns raised by the planning authority, I further note that these units are identified as Part V units. I concur with the planning authority regarding the potential negative residential amenity for these units and recommended that they be omitted. I am of the view that this matter can be addressed through the omission of these 2 no. 1 bed apartments and their replacement with additional communal amenity spaces which would enhance the level of communal amenity available for prospective residents. Alternative appropriate locations for these 2 no. Part V units should be agreed with the planning authority. This could be addressed by condition should the Board consider it appropriate. It results in a development of 132 BTR apartments with the following mix: 1 no. Studio, 94 no. 1 bed and 37 no. 2 bed.

### **Private Amenity Space**

Flexibility, under SPPR 8, applies in relation to the provision of private amenity spaces associated with individual units and in relation to the provision of all of the communal amenity space (as set out in Appendix 1 of aforementioned Apartment Guidelines), on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development. The proposal in this instance seeks relaxations in terms of private amenity/open space provision.

All units are generally consistent with the requirements of the Apartment Guidelines, with the exception of private open space provision. Private amenity is proposed for 57 apartments (ie 43% of the apartments), this provided in the form of balconies/terraces.

SPPR8 allows for flexibility in relation to the provision of private amenity space and while I acknowledge that the current proposal pushes the limits in terms of this flexibility. I consider, given the location of the site in a prime city centre brownfield site suitable for redevelopment as a BTR scheme, the quality of the proposed communal amenity areas (internal and external) and the proximity of Weaver Park and St. Patricks Park in this instance the level of private amenity provided is acceptable but should not be viewed as a norm as it is site specific to this location and development. Furthermore, I note that the proposed development has a particular design aesthetic and the provision of projecting balconies may undermine the overall architectural approach to the scheme.

The Newmarket area is an area identified for regeneration and is in transition and provides a wide range of facilities within a short walking distance of the current proposal. I consider the overall planning gain of development this site which would contribute to the regeneration of the area in a positive manner by enhancing the area through a high quality scheme in accordance with the vision set out by Dublin City Council for the SDRA which seeks to attract a vibrant and diverse population to the area.

### **Communal Facilities & Amenities**

SPPR 7 sets out that BTR must also be accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development. These facilities to be categorised as: (i) Resident Support Facilities; (ii) Resident Services and Amenities.

Communal facilities and amenities are provided in the form of waste management facilities, bicycle maintenance, reception with concierge & management facilities and a postal storage area proposed. In terms of Residents Services and Amenities the development provides a games room(c.55sq.m) and a co-working area (c.60sq m). Together with the foyer area. The overall internal communal amenity space equates to 115 sq m. The planning authority consider this acceptable. I draw the Board attention to my recommendation to omit 2 no. ground floor apartments and require that this area be communal amenity space for residents which will further enhance the level of amenities provided. A breakdown of the individual areas is provided in the Housing Quality Assessment and the Planning Report submitted with the application. This is acceptable.

Communal Outdoor Amenity space is provided for residents in 6 no. amenity areas as follows: A communal courtyard at first floor level (c.330sq.m) with a 73 sq m informal play area; b) sixth floor level communal garden terrace (c.51sq.m) c) 2 no. communal garden terraces at seventh floor level (combined area of c. 372sq.m); d) 200 sqm communal garden terrace at eight floor level (c.200sq.m) and e) communal garden terrace is provided on the roof of the eight floor level (c.178sq.m). Resulting in c.1137sq.m external communal amenity space proposed within the scheme. I consider this acceptable. Refer to section 10.3.3 for further assessment of the quality of these spaces.

The Planning Authority considered that the quantum and quality of the communal open space amenity and recreational areas provide for a suitable level of amenity.

The level of amenity being afforded to future occupants is considered acceptable. Noise mitigation measures will be required to address potential noise from traffic. This could be addressed by condition if the Board is of a mind to grant permission. I am satisfied that there is a clear definition between communal and private spaces. I address the issue of daylight/sunlight for amenity spaces in section 10.3.3 of this report.

### **10.3.2 Overlooking**

No concerns have been raised pertaining to overlooking within the proposed development.

I am of the view that for the most part the proposed layout, i.e the provision of one block on the site, results in a development where there are no opposing balconies and habitable rooms within the scheme. However I do recognise that there are pinch points within the proposed scheme. I do however consider that given the limited instances where this arises that this matter can be addressed by appropriate screening and mitigation measures, such as vertical louvre/angles fins etc to balconies and windows, which are commonly used in urban areas to address potential overlooking while also protecting the amenity value of the balconies and rooms they serve. This matter could be addressed by condition if the Board considers granting permission.

### **10.3.3 Access to daylight/sunlight/overshadowing**



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

The Daylight, Sunlight and Overshadowing Study (dated December 2021) submitted with the application considers inter alia potential daylight provision within the proposed scheme and overshadowing within the scheme. The report focuses on measuring the daylight and sunlight impact to the surrounding dwellings when compared to the existing situation. It also considers the impact to daylight and sunlight when considering the proposed design itself. For clarity it should be noted that there are permitted developments to the north, south and west of the site which have been modelled as part of the existing situation. This assessment is read in conjunction with the BS 2008 Code of Practice for Daylighting and the BRE 209 site layout planning for daylight and sunlight (2011). While 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), I am satisfied that this document/updated guidance does not have a material bearing on the outcome of the assessment and that the relevant guidance documents remain those referenced in the Urban Development & Building Heights Guidelines and the Apartment Guidelines. I am satisfied that the target ADF for the new residential units are acceptable and general compliance with these targets/standards would ensure adequate residential amenity for future residents.

In general, Average Daylight Factor (ADF) is the ratio of the light level inside a structure to the light level outside of structure expressed as a percentage. The BRE 2009 guidance, with reference to BS8206 – Part 2, sets out minimum values for Average Daylight Factor (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 Guidance notes that non-daylight internal kitchens should be avoided wherever 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 daylight 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.

The applicant's assessment includes an analysis of the proposed apartments with regard to amenity (daylight) available to future residents within the proposed scheme.

The applicant's assessment concluded that across the proposed development, 94% of the tested rooms are achieving ADF values above the BRE and BS 8206-2:2008 guidelines when Living/Kitchen/Dining spaces are assessed as whole rooms against a 2% ADF target. This increases to 96% when the results from the sample floors are extrapolated to account for all upper spaces within the development. Notwithstanding the high level of compliance with BRE and BS 8206-2:2008 guidelines, compensatory measures provided by the development include: a) the number of dual aspect apartments in the scheme is 35% which is 2% above the minimum requirement for a city centre site, b) the scheme provides a substantial quantum of private and communal amenity space to serve future residents in a combination of balconies, terraces, a courtyard and internal amenity spaces at ground floor level. This is over the minimum requirement as set out in the design guidelines by 96sqm, c) the majority of Apartments face west/south and east. The apartments on the northern elevation are larger in size and have been specifically designed with concave balconies/insets to ensure views to the east onto Newmarket Square, which is anticipated to be a multi-functional market/open space in the near future. Views are also provided looking westwards from these units and d) 64% of apartments are above the minimum standard.

The applicant has argued that the incorporation of the above compensatory measures more than offset the reduced daylight performance to a small number of apartments when the proposed development as a whole is considered. In addition to the inclusion of the above compensatory measures, the proposed design seeks to improve daylight within the development by increasing window openings, moving balcony positions and changing apartment layouts to maximise the daylight potential within the proposed apartments.

The study assessed a sample spaces/rooms across the block up to Level 6. The study concluded that 94% (ie 206) of 220 the rooms assessed achieve the minimum ADF set out in the BRE Guidance. It is stated that the LKD that do not meet 2% have values of ranging from 1.5 (L01: A09), 1.64 (L01: A16), 0.93 (L01: A16), 1.86 (L01: A18), 1.21 (L02: A09), 1.41 (L02: A10), 0.54 (L02: A17), 1.79 (L02: A19), 1.50 (L03: A17), 1.64 (L01: A12), 1.68 (L04: A09), 0.61 (L04: A17). Level 5 and 6 have all 2% or higher and comply with the minimum BRE requirements.

Of the 99 LKD assessed 85 achieved an ADF of 2% or more. 12 have values below 2%, of which 4 achieve values below 1.5% with values of 0.93, 0.54, 0.61 and 1.21%. This equates to 86% achieving a minimum of 2% ADF.

Of the 123 bedrooms assessed all achieve ADF of 1% or more. This equates to 100% achieving a minimum of 1% ADF.

Of the overall 206 rooms assessed 94% comply with BRE Guidance, this increases to 96% when the results from the sample floors are extrapolated to account for upper floors.

While the BS 8206-2:2008 indicates that where one room serves more than one purpose, the minimum ADF should be that for the room type with the highest ADF value, in this instance the kitchen area forms part of the living/dining area. I consider it reasonable to hold that the primary function of living/kitchen/dining (LKD) open plan room in an apartment such as those proposed, is as a dining/living room function and thus, it is reasonable to apply an ADF of 1.5%. The BRE guidance states, inter alia, that "non-daylight kitchens should be avoided wherever 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 daylit living room'. In this instance the kitchens are daylit, they are not intended as a dining area and the kitchen is directly linked to a well daylit living/dining room, thus it does not conflict with the BRE guidance in this regard. Where the primary use of a living/kitchen in apartments is living area in which case it may be reasonable to apply 1.5%. In this instance c. 86% of the KLD achieve  $\geq 2\%$  ADF and the remainder achieve  $\geq 1.5\%$  ADF, bar two which has values of 0.61 and 1.21% respectively. I am of the opinion that the proposed development broadly complies with the BRE guidance and will provide an appropriate standard of residential amenity regarding access to daylight which I consider acceptable given the use of these rooms and the provision of housing on serviced lands in an area undergoing significant regeneration,

The planning authority raised no concerns in relation to ADF values for the proposed development.

Having regard to the forgoing and that the analysis considered 220 points which relates to a sample habitable rooms across the proposed development these included a sample of worse case scenario bedrooms and living/kitchen/dining for units across the development I am satisfied the overall level of residential amenity is acceptable, having regard to internal daylight provision.

In addition to daylight within the units, the proposed development is also required to meet minimum levels of sunlight within amenity spaces. Section 3.3 of the BRE guidelines state that good site layout planning for daylight and sunlight should not limit itself to providing good natural lighting inside buildings. Sunlight in the spaces between buildings has an important impact on the overall appearance and ambience of a development. It is recommended that at least half of the amenity areas should receive at least 2 hours of sunlight on 21st March.

To this end, an analysis of the sunlight exposure levels for the amenity areas in the proposed scheme was carried out and submitted. The analysis indicated that in total 6 no. spaces had been assessed, of which 5 meet the criteria as set out in the BRE Guidelines. Amenity Ref.1 refers to the first floor courtyard (c.303sq.m) has a value of 0%. The applicant has submitted that this area has been excluded from the calculations for external communal areas and they have relied solely on the roof terraces (c.801sq.m) in their calculations. It is argued that by excluding the courtyard, the development still delivers an adequate level of high quality functional communal outdoor amenity spaces that meet the qualitative standards of the City Development Plan and the Apartment Guidelines.

The average value shows that c.69% of the combined amenity space area would receive more than 2 hours of sunlight on March 21<sup>st</sup> (i.e the remaining 5 proposed amenity areas). The applicant has argued that 69% of the combined communal area achieve at least 2 hours of sunlight and that the roof top terraces will be high quality areas for occupants which is very positive given the city centre location.

The planning authority has not raised concerns regarding the proposed communal amenity area and access to sunlight.

I have considered the assessment submitted and note that 5 of the 6 spaces meet the requirements. I acknowledge that the development benefits from access to all the roof terraces which achieve acceptable levels of sunlight. I also note that when reviewed cumulatively 69% of the proposed outdoor amenity areas are capable of receiving 2 hours of sunlight on March 21<sup>st</sup> and it could be argued that as BRE requires at least half of the amenity areas receive at least 2 hours of sunlight on the 21<sup>st</sup> March then the current proposal complies with the BRE guidelines. I do not consider that the BRE guidance intended to imply that when considered cumulatively, it would be acceptable for amenity spaces serving large developments which do not comply with BRE guidance to be acceptable when considered as a whole in instances where there is significant disparity in amenity value or where it relates to the main amenity areas. In this instance, the courtyard area is not proposed as the main amenity area and therefore I consider this acceptable given the access to 5 no. roof terraces within the development.

Given the nature of the development, BTR apartments, I am of the view that the communal amenities are to be provided in this case, given the absence of public open space, should be of the highest quality. Communal amenities are central to the residential standards of BTR developments to ensure quality amenities and living environment for future occupiers. As outlined above I note that residents have access to all of the amenity areas, I consider the shortfall for 1 area (podium level courtyard) acceptable given the level of amenities available to the residents within the proposed scheme.

Having regard to the foregoing I consider that adequate allowance has been made in the proposed design for access to sunlight through its configuration on site relevant to the scale of the development. I am satisfied that adequate levels of amenity space will meet sunlight standards. I have also carried out my own assessment in accordance with the considerations outlined in the BRE guidelines and I do not consider the development to be in accordance with the BRE guidelines.

#### **10.3.4 Wind/Microclimate**

The applicant carried out wind and microclimate modelling for the proposed development and submitted a Wind and Microclimate Study report. For the purposes of performing an elaborate wind microclimate study 8 different wind scenarios and directions were considered in order to take account of all the relevant wind directions in Dublin. The report assessed siting and standing comfort for roof amenity spaces, courtyard space, balconies and walking comfort (leisure and business)

The applicant's study concluded:

The roof amenity spaces of the proposed development show an excellent compliance with the requirements of the Lawson's Sitting Comfort Criterion with no further mitigation measures required.

The courtyard space in the centre of the proposed development show an excellent compliance with the requirements of the Lawson's Sitting Comfort Criterion with no further mitigation measures required.

Most of the balconies show excellent compliance with the requirements of the Lawson's Sitting Comfort Criterion. The balconies at the north-west corner i.e. at corner of Newmarket Square and Ardee St. show limited compliance with the strictest requirement of the Lawson's Sitting Comfort Criterion. However the usability of these balconies is not affected due to the non-compliant parts being at the very corner of these balconies, and excellent compliance noted with Lawson's Standing Comfort Criterion with no further mitigation measures required.

The streets around the site show excellent compliance with requirements of the Lawson's Leisure, and Business Walking Comfort Criteria and with requirements of the Lawson's Pedestrian Safety Criteria.

The planning authority did not raised concerns relating to this matter. I have examined the information submitted and I consider the findings robust and acceptable. Having regard to the forgoing it is my view that the proposed development would not generate conditions that would cause critical conditions for vulnerable users of the areas. I note that balconies are recessed which offers protection from prevailing winds. Given the proposed height and design of the block I am satisfied with that the proposed balconies would not generate undue conditions for users, in my opinion.

## **10.4 Potential Impact on adjoining properties/land**

### **10.4.1 Context**

Observers and Elected Representatives raised concerns in relation to the impact on surrounding amenities. I note that no submissions have been received from any residents in the vicinity of the application site. Potential impacts on residential amenity relate to overbearance, overlooking and overshadowing, nuisance arising during construction/operational phases and potential devaluation of adjoining properties. Issues or potential impacts as a result of traffic or physical infrastructure are dealt with under separate specific headings dealing with these issues. This section considers overbearance, overlooking and overshadowing/access to daylight/sunlight, impacts arising from construction and operational phases and potential devaluation of adjoining properties

The application site is located within the inner-city and its former use as warehouses and a place of worship in an area traditionally characterised by low-rise development associated within its industrial heritage which is the subject of significant redevelopment at present. It is an area in transition and any development that reflects its development potential and context is likely to result in a significant change for the surrounding properties.

I am satisfied that the proposed development will not have a detrimental impact on properties (two storey houses) on the western side of Ardee Street and along adjoining residential streets in terms of overlooking. To the south the site is bounded by Mill Street and Student Accommodation which is currently under construction. Mitigation measures are provided in the development under construction and I consider that units facing Mill Street can be augmented through the use of appropriate mitigation/screening where required. Overlooking of the 'office' development to the east is not an issue. The development is designed in such a manner that would not limit the redevelopment potential of these lands.

#### **10.4.2 Overbearance**

I note that this matter was raised in third party submissions and by elected representatives.

The planning authority also raised concerns regarding the overbearing impact of the proposed development on adjoining residential amenity in particular arising from the 9 storey element and recommended that a floor be omitted by condition. I do not consider that the impact is such that warrants the removal of a floor at this point, The 9 storey element forms the corner of Ardee Street and Newmarket Square in an area undergoing significant redevelopment. I consider the scale and height of the proposal acceptable and would not result in an overbearing development when viewed from the closest adjoining residential properties which are on the opposite side of Ardee Street and along adjoining residential streets.

The taller element (9 storeys) is concentrated at the corner of Ardee Street/Newmarket which provides a focal point on the corner and signals the entrance to Newmarket Square where building of similar heights are under construction. Contiguous elevations submitted illustrate the transition in building height across the site.

A key consideration is whether the height, scale and mass of development and the proximity to neighbouring properties is such that it would be visually overbearing where visible from the adjacent properties. The proposed development clearly exceeds the prevailing two-storey building heights to the west of Ardee Street. And I acknowledge that any development (regardless of scale and height) will have an visual impact. I also note that this site when viewed in the context of the development that is taking pace to the north and south, the proposed scale and height is appropriate and integrates with the developments along Mill Street, Newmarket and Ardee Street. I am of the view, given the orientation of the existing two storey houses to the west and the relationship with the application site that the scale and massing proposed that the proposed development would not result in an overbearing and visually dominate development when viewed from these houses.

While I accept that a degree of visual change should be expected having regard to the constantly evolving and restructuring urban landscape and the development of contemporary development of this nature would not be unexpected in this area owing to the rezoning as part of the Development Plan variation for intensive development purposes. I also acknowledge that any development on the application site in line with its zoning objectives would be visible from adjoining properties. The crux of the matter is the level of impact on the adjoining residential properties in terms of visual overbearance and whether this would detract from their residential amenities. I have inspected the site and its surrounds and having regard to the proposed design, scale and massing which I address in section 10.2.

### **10.4.3 Overlooking**

There are no residential properties immediately bounding the application site. I note that no submissions have been received from any residents in the vicinity of the application site. The closest residential development is Mill Street Student Accommodation, located to the south of the site on the opposite side of Mill Street. The planning authority have not raised overlooking as a concern.

No balconies are proposed on the southern elevation on Mill Street. I acknowledge that the balconies are recessed along Ardee Street and recessed/angled facing Newmarket Square and additional screening measures can be used to address overlooking in constrained urban sites. I am satisfied that the application site is sufficiently removed from the closest residential receptor (Mill Street Student Accommodation) on the opposite side of a public road that I do not foresee undue impacts arising with regard to overlooking to warrant a reason for refusal.

Regarding the potential impact on the lands to the east, mitigation of potential impacts through design is proposed so as not to prejudice potential development of these lands where The Three office is located.

### **10.4.4 Access to daylight/sunlight/overshadowing**

#### **10.4.4.1 Context**



In considering daylight and sunlight impacts, the Apartment Guidelines (2020) state that planning authorities 'should have regard to quantitative performance approaches outlined in guides like the BRE guide Site Layout Planning for Daylight and Sunlight (2nd edition) or BS 8206-2: 2008 – Lighting for Buildings – Part 2: Code of Practice for Daylighting' (Section 6.6 refers). The Building Height Guidelines (2018) state under Section 3.2 Development Management Criteria, that at the scale of the site/building, 'appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment's Site Layout Planning for Daylight and Sunlight (2nd edition) or BS 8206-2: 2008 – Lighting for Buildings – Part 2: Code of Practice for Daylighting'. I note the latter document British Standard (BS) 8206-2:2008 has since the publication of the guidelines been replaced by BS EN 17031:2018 'Daylight in Buildings', however, I am satisfied that it does not have a material bearing on the outcome of the assessment and that the relevant guidance documents remain those referenced in the Building Height Guidelines and the Apartment Guidelines.

Both the Building Heights and Apartment guidelines indicate that where an applicant / proposal cannot fully meet all of the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, and thereafter the planning authorities / An Bord Pleanála should apply their discretion, having regard to local factors including site specific constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution. This is provided for within the BRE guidance document itself.

I have had appropriate and reasonable regard to these documents (and associated updates) in the assessment of this application. I note that the standards described in the BRE guidelines are discretionary and not mandatory policy/criteria, and the BRE guidelines state 'Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design'.

The Building Height Guidelines also seeks compliance with the requirements of the BRE standards and associated British Standard (note that BS 8206-2:2008 is withdrawn and superseded by BS EN 17037:2018), and that where compliance with requirements is not met that this would be clearly articulated and justified. The Sustainable Urban Housing Design Standards for New Apartments Guidelines, 2020 also state that planning authorities should have regard to these BRE or BS standards.

Policy SC13 of the current City Development Plan promotes sustainable densities with due consideration for surrounding residential amenities. The Plan includes a host of policies addressing and promoting apartment developments. The Building Research Establishment (BRE) document 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice' (2011) is referenced in the Plan with respect to the consideration of aspect, natural lighting, ventilation and sunlight penetration for new apartments.

I have considered the reports submitted by the applicant and have had regard to BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings - Code of practice for daylighting). While 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) I am satisfied that this document / updated guidance does not have a material bearing on the outcome of the assessment and that the relevant guidance documents remain those referred to in the Urban Development and Building Heights Guidelines and the Sustainable Urban Housing Design Standards for New Apartments Guidelines, 2020.

Neither the observers, the elected representative nor the planning authority have not raised concerns in relating to access to sunlight/daylight from any of the residential properties within the immediately vicinity of the application site. Concerns regarding overshadowing of private amenity space of houses in the immediate vicinity has not been raised either.

#### **10.4.4.2 Daylight**

In designing a new development, it is important to safeguard the daylight to nearby buildings. BRE guidance given is intended for rooms in adjoining dwellings where daylight is required, including living rooms, kitchens and bedrooms. Tests that assist in assessing this potential impact, which follow one after the other if the one before is not met, are as noted in the BRE Guidelines:

- i. Is the separation Distance greater than three times the height of the new building above the centre of the main window (being measured); (ie. if 'no' test 2 required)
- ii. Does the new subtend an angle greater than 25° to the horizontal measured from the centre of the lowest window to a main living room (ie. if 'yes' test 3 required)
- iii. Is the Vertical Sky Component (VSC) <27% for any main window? (ie. if 'yes' test 4 required)
- iv. Is the VSC less than 0.8 the value of before ? (ie. if 'yes' test 5 required)

- v. In room, is area of working plan which can see the sky less than 0.8 the value of before ? (ie. if 'yes' daylighting is likely to be significantly affected)

The above noted tests/checklist are outlined in Figure 20 of the BRE Guidelines, and it should be noted that they are to be used as a general guide. The document states that all figures/targets are intended to aid designers in achieving maximum sunlight/daylight for future residents and to mitigate the worst of the potential impacts for existing residents. It is noted that there is likely to be instances where judgement and balance of considerations apply. Where the assessment has not provided an assessment of all sensitive receptors, I am satisfied that there is adequate information available on the file to enable me to carry out a robust assessment, To this end, I have used the Guidance documents referred to in the Ministerial Guidelines to assist me in identifying where potential issues/impacts may arise and to consider whether such potential impacts are reasonable, having regard to the need to provide new homes within zoned, serviced and accessible sites, as well as ensuring that the potential impact on existing residents is not significantly adverse and is mitigated in so far as is reasonable and practical.

The site is a brownfield site with a mixture of buildings of different scales and sizes comprising residential, commercial and office developments along Mill Road, Ardee Street and Newmarket Square. The Three building bounds the application site to the east and this is an office block. The closest residential properties are student accommodation (under construction) to the south on the opposite side of Mill Street along Ardee Street, houses along the western side of Ardee Street and Chambers Road which is accessed off Ardee Street. To the north on the opposite side of Newmarket the closest are student accommodation under construction.

The applicant's assessment identified the following sensitive receptors (see page 16 of the applicant's daylight, sunlight and overshadowing assessment:

- Ardee Street (north) 2 no. commercial with upper floors and apartment block (3 to 5 storeys)
- Chamber Street (commercial as above that turns the corner, 2 no. 3 storey houses and 2 no. 2 storey terrace
- Ardee Street (south)/Oscar Square 4 storey building 3 storey and 2 storey terraced housing)
- Oscar Square (3 no. 2 storey houses)
- Newmarket/Brabazon Street (under development)
- Mill Street Student Accommodation (4 to 6 storeys)
- Newmarket Student Accommodation (4 to 5 storeys)
- Adjoining Office block (only development directly bounding the site) with the 'rear courtyard'

The assessment also reference the expired Liberties LAP which noted a comparison for 8 storeys at the corner of Newmarket and Ardee Street and 6 storeys along the frontage of Ardee Street.

I note that no submissions have been received from local residents. The Planning Authority nor third party observers have raised concerns regarding potential impacts arising from access to daylight.

### Ardee Street

No submissions have been received from owners/occupiers of these properties. These are located to the north of the application site on the opposite site of Ardee street. Of the 37 points assessed 8 have VSC values less than 27% but I note that the existing VSC for these point is below 27%. The BRE Guidelines requires development meets the required 27% or where < than 27% but >80% existing. The points above comply and are therefore acceptable.

Given the context of the site I am of the view that consideration should be given to the fact that the comparison being made is between an existing, under-utilised site and the proposed development, which is inevitably going to have some form of an impact given the circumstances and flexibility regarding BRE standards should be applied to balance the objective of achieving urban regeneration with any potential impacts.

### Chamber Street

No submissions have been received from owners/occupiers of these properties. These are located to the... of the application site on Chamber street which is accessed off the western side of Ardee street. Of the 19 points assessed 2 have VSC values less than 27% and less than 80% existing. The BRE Guidelines requires development meets the required 27% or where < than 27% but >80% existing. The points above comply and are therefore acceptable.

As highlighted above 2 of the 19 points are marginally below the BRE Guidelines (with 72 and 79%) given the context of the site I consider this acceptable.

Given the context of the site I am of the view that consideration should be given to the fact that the comparison being made is between an existing, under-utilised site and the proposed development, which is inevitably going to have some form of an impact given the circumstances and flexibility regarding BRE standards should be applied to balance the objective of achieving urban regeneration with any potential impacts.

### Oscar Square/Ardee Street (1)

No submissions have been received from owners/occupiers of these properties. These are located to the... of the application site on Chamber street/Ardee Street which is accessed off the western side of Ardee street. Of the 41 points assessed 23 have VSC values less than 27% and less than 80% existing. The BRE Guidelines requires development meets the required 27% or where < than 27% but >80% existing.

As highlighted above 23 of the 41 points are marginally below the BRE Guidelines given the context of the site I consider this acceptable.

#### Oscar Square/Ardee Street (2)

No submissions have been received from owners/occupiers of these properties. These are located to the... of the application site on Oscar Square/Ardee Street which is accessed off the western side of Ardee street. Of the 5 points assessed 2 have VSC values (with 65 and 79%) less than 27% and less than 80% existing. The BRE Guidelines requires development meets the required 27% or where < than 27% but >80% existing.

As highlighted above 3 of the 5 points are marginally below the BRE Guidelines given the context of the site I consider this acceptable.

#### Mill Street Student Accommodation

No submissions have been received from owners/occupiers of these properties. These are located to the south of the application site on Mill Street. Of the 26 points assessed 3 have VSC values (with 58, 63 and 71%) less than 27% and less than 80% existing. The BRE Guidelines requires development meets the required 27% or where < than 27% but >80% existing.

As highlighted above 3 of the 5 points are marginally below the BRE Guidelines given the context of the site I consider this acceptable.

#### Newmarket Student Accommodation

Currently under construction and located to the north of the application site on the northern side of Newmarket Square. Of the 56 points assessed 46 have VSC values less than 27% and less than 80% existing. The BRE Guidelines requires development meets the required 27% or where < than 27% but >80% existing.

As highlighted above 3 of the 5 points are marginally below the BRE Guidelines given the context of the site I consider this acceptable.

#### Adjoining Commercial/Office development

No submissions have been received from owners/occupiers of these properties. These are located to the... of the application site and form the only property with a shared boundary with the applications site. Of the 33 points assessed all have values greater than 27% or 80% existing. The BRE Guidelines requires development meets the required 27% or where < than 27% but >80% existing.

Furthermore I note that this building is not in use for residential purposes.

#### Daylight Conclusion:

I am satisfied that the proposed layout has had regard to the adjoining sensitive receptors and has been designed to mitigate potential impacts with regard to access to daylight of existing residential properties bounding and adjacent to the site. Of the 217 windows assessed and summarised above, no impact was noted on 61.% (132) of windows serving adjoining or adjacent existing properties included in the assessment. Given the height and scale of the current structures on site which are vacant and the orientation of the windows which adjoin the application site, the windows affected windows currently receive a level of daylight that is beyond that typically expected in an inner-city environment and that any development on the site is likely to affect these windows, in my opinion.

The assessment submitted with the application concluded that while some impact is noted to the available daylight and sunlight in adjacent properties it is consistent with development on a brownfield underutilised site in a tight urban environment.

I acknowledge the difference in the VSC values from the pre and post development assessment on the houses to the west. However in this instance I am of the view that consideration should be given to the fact that the comparison being made is between an existing, under-utilised site and the proposed development, which will inevitably have some form of an impact. Flexibility regarding BRE standards should be applied to balance the objective of achieving urban regeneration with any potential impacts. Having regard to the foregoing I am satisfied that adequate regard has been had to the potential impact on adjoining lands and properties, when balanced against the need for housing on zoned and serviced lands.

#### **10.4.4.3 Overshadowing:**

The assessment submitted with the application includes existing and proposed radiation maps. The BRE guidance recommends that at least 50% of the amenity areas should receive a minimum of two hours sunlight on 21st March (spring equinox). Shadow cast diagrams for the 21<sup>st</sup> March, June 21<sup>st</sup> and December 21<sup>st</sup> are also included in the assessment.

The applicant's assessment included the potential impact on one private garden to the west, this relates the main amenity area serving this house which is located to the front given the siting of the house on the corner. There are portions of the garden that receives less than 2 hours of sunlight in the current context. This situation remains post development scenario. I am satisfied that the proposed development would not have an adverse impact on the amenity of the properties in terms of overshadowing -and is BRE compliant.

The planning authority has not raised concerns regarding the level of overshadowing of the amenity spaces associated with houses in the immediate vicinity. However, I acknowledge that a degree of overshadowing is to be expected in urban areas and I consider the level of impact is acceptable in this instance given the context of the site and its location in Dublin inner city in an area the subject of regeneration.

#### **10.4.5 Potential Impacts during Construction Phase**

One of the main concerns raised by Cllr Devine in her submission relates to the potential impact of traffic and associated nuisance on the existing residential population during the construction phase. Mainly arising from overspill parking onto adjoining residential streets which occurs on a regular basis given the level of construction taking place at present in the area. Concerns have also been raised that that the amenities of local residents would be impacted by noise and dust during the construction phase of the proposed development.

An Outline Construction & Demolition Waste Management Plan (oCDWMP) submitted with the application deals with matters of waste management amongst other matters. As such, these plans are considered to assist in ensuring minimal disruption and appropriate construction practices for the duration of the project. I have no information before me to believe that the proposal will negatively impact on the health of adjoining residents.

The Outline Construction Environment Management Plan (oCEMP) addresses how it is proposed to manage impacts arising at the construction phase to ensure the construction is undertaken in a controlled and appropriately engineered manner to minimise intrusion. The oCEMP addresses-construction traffic and management of same. Includes phasing for works, methodologies, and mitigation measures and address working hours, site security, dust, noise, visual impact and traffic, etc .

I have examined the oCEMP and oCDWMP and I consider the proposal robust and reasonable. I note that the impacts associated with the demolition, construction works and construction traffic would be temporary and of a limited duration. I recommend that the applicant be required to submit and agree a final CMP and CDWMP with the Planning Authority prior to the commencement of development.

The oCEMP estimates that the duration of the construction phase will be 18 – 24 months and during the peak construction period approximately 100 – 150 people will be employed on site. The plan notes that main construction access is proposed from Newmarket Square with a potential secondary (occasional construction access) onto Ardee Street. The outline CEMP notes that loading is proposed to take place from Newmarket Square within a ‘materials set down area’ which is the subject to DCC agreement and approval. The two potential site entrance points area outlined within the oCEMP will also be subject to final written agreement and approval with DCC.

The applicant has outlined that a Construction Traffic Management Plan will be put in place to control access to and egress from the site for construction traffic. Drawing No. LCS-BMD-ZZ-ZZ- 30 DR-C-1006 Construction Traffic Management Plan for the Newmarket Area shows the anticipated “construction route traffic for the subject site” by way of an annotated left-in/left-out route into and out of Newmarket Square via Brabazon Street (inwards traffic) and Ardee Street (outwards traffic). The submitted drawing also indicates the proposed loading area on Newmarket Square as well as the loading areas and construction vehicle routes of permitted adjacent sites which are currently at construction stage.

DCC Transportation Section noted that the Mobility requirements for works should be considered i.e. cycle parking provision for construction phase should be facilitated.

I acknowledge that there will be some disruption during the course of construction works, including that from construction noise. Such disturbance is anticipated to be relatively short-lived in nature. The nature of the proposal is such that I do not anticipate there to be excessive noise/disturbance once construction works are completed. If the Board is disposed towards a grant of permission, I recommend that such issues like wheel wash facilities, hours of works, site compound lighting and the like be dealt with by means of condition. A final Construction and Demolition Management Plan should be submitted and agreed with the Planning Authority prior to the commencement of any works on site.

Having regard to the scale of permitted developments within the Newmarket Area and the resulting potential for cumulative construction effects in particular from cumulative construction traffic impacts, it is recommended that cumulative impacts and appropriate mitigation measures are considered in the final CEMP. Should the Board consider granting permission I recommended that a detailed Construction Traffic Management Plan (CTMP) be required by condition and that all proposed site access points, construction traffic routes and unloading/loading be agreed with the Environment and Transportation Department of Dublin City Council prior to the commencement of development.



Observers have also raised concerns that the existing structures on site contain asbestos and this has not been addressed in the application documentation. I have examined the documentation submitted and note the oCEMP outlines that in terms of demolition stage waste, an asbestos survey of the building and environmental testing of the sub-slab ground material have been carried out (refer to Appendix 2 of the oCDWMP). These have been used to inform the outline Construction and Demolition Waste Management Plan. In terms of construction stage waste, the oCDWMP for the project proposes a target maximum waste generation for the new construction.

The Asbestos survey should be read in conjunction with the outline Construction and Demolition Waste Management Plan and the outline Construction Environment Management Plan. The oCDWMP submitted with the application deals with matters of waste management amongst other matters. As such, these plans are considered to assist in ensuring minimal disruption and appropriate construction practices for the duration of the project. I have no information before me to believe that the proposal will negatively impact on the health of adjoining residents.

I am of the view that construction related matters can be adequately dealt with by means of condition as is standard practice. If the Board is disposed towards a grant of permission, I recommend that a final Construction Environment Management Plan, Construction & Demolition Waste Management Plan be submitted and agreed with the planning authority prior to the commencement of any works.

#### **10.4.6 Devaluation of adjoining properties.**

I have no information before me to believe that the proposal, if permitted would lead to devaluation of property in the vicinity. Impacts on privacy would not be so great as to warrant a refusal of permission.

### **10.5 Traffic & Transportation**

#### **10.5.1 Access and traffic**

As noted in section 10.4.5 above one of the main concerns raised by Cllr Devine in her submission relates to the potential impact of traffic and associated nuisance on the existing residential population during the construction phase. Mainly arising from overspill parking onto adjoining residential streets which occurs on a regular basis given the level of construction taking place at present in the area.

No vehicular access is proposed and no car parking. The application includes, inter alia a 'Residential Travel Plan and Mobility Management Plan' a 'Quality Audit' and a 'DMURS Compliance Statement'

Having regard to the scale of permitted developments within the Newmarket Area and the resulting potential for cumulative construction effects in particular from cumulative construction traffic impacts, it is recommended that cumulative impacts and appropriate mitigation measures are considered in the final CEMP. Should the Board consider granting permission I recommended that a detailed Construction Traffic Management Plan (CTMP) be required by condition and that all proposed site access points, constriction traffic routes and unloading/loading be agreed with the Environment and Transportation Department of Dublin City Council prior to the commencement of development.

The proposed development includes the following public realm improvement works immediately adjoining the proposed building:

- Provision of improved footpaths with a minimum width of 1.8m along Newmarket Square, Ardee Street and Mill Street along the frontage of the proposed building.
- Provision of 5 no. car parking bays (including 1 no. car share space) and a loading bay along the eastern side of Ardee Street.
- Relocation of an existing bus stop on the western side of Ardee Street. The exact position of the relocated bus stop will be agreed with the DCC Roads, Maintenance and Traffic Division prior to the commencement of development, in liaison with the applicant/consulting engineer for the adjoining mixed use/residential development on the western side of Ardee Street, permitted under DCC Ref. 3266/20.
- Provision of improved uncontrolled pedestrian crossings incorporating dropped kerbs and tactile paving at junctions to the north-west (Newmarket Square/Ardee Street/Chamber Street junction) and south-west (Mill Street/Ardee Street/Oscar Square/Clarance Mangan Road junction) of the proposed building.

A letter of consent from DCC Environmental & Transportation Section is included with the application and all works are proposed within the application site boundaries.

Observers have not raised concerns with any of the public realm works proposed. As highlighted earlier issues raised by Cllr Devine predominantly related to traffic and parking and made particular reference to parking and traffic during the construction phase which I have addressed in section 10.4.5.

The current application provides a built edge to Newmarket, Ardee Street and Mill Street with active ground floor uses (commercial and shared workspaces). The frontage along Newmarket is set back from the streetline and provides a buffer between the edge of the building and the public footpath/road.

The site is located in The Liberties area of Dublin city centre which is undergoing significant regeneration with a number of sites in the vicinity being developed for residential, student accommodation and commercial purposes. The introduction of a BTR scheme at this location will contribute to the tenure and demographic mix in the area. Within the immediate vicinity is the Liberties Distillery and Teelings Distillery along with hotels in the vicinity are assisting in promoting the area for tourism. The area also accommodates student accommodation and residential schemes, The proposed development will significantly enhance the quality of the streetscape and animation at street level with ground floor uses opening onto Newmarket Square and Ardee Street.

The proposed development provides for significant works to the public realm and DCC lands along St. Luke's Avenue are incorporated into the application site boundaries. There is a Part VIII for public realm improvements at Newmarket. There is a strong interface between the proposed development and the public realm. In terms of surveillance, shared working and commercial uses are located along the ground floor and will provide a level of passive surveillance.

### 10.5.2 Parking

#### Car:

A 'Parking Report' is submitted with the application. No onsite parking is proposed to serve the proposed development, As noted above in 'public realm works' 5 parking bays and a loading bay are proposed to be provided along Ardee Street as part of this application.

The application site is located in Parking Standards Area 2, Map J 'Strategic Transport and Parking Areas' Dublin City Development Plan 2016- 2022. Table 16.1 sets out the maximum car parking standards for various uses. In Zone 1: Retail and other (1 space per 350sq.m GFA) and residential (1 per dwelling). This results in a requirement for 134 (residential) and 2 (retail), a total of 136 spaces.

The 2016 City Plan notes that apartment parking spaces are mainly to provide for car storage to support family friendly living policies in the city and make apartments more attractive for all residents. It is not intended to promote the use of the car within the city. If the car space is not required in the short-term, it should be given over to other residential storage or utility uses.

DCC Transportation Division raised concerns regarding parking provision but the planning authority in the Chief Executive report noted the location of the site, proximity to the city centre, cycle parking provision on site, the location of adjacent existing public car share facilities and the potential for further spaces within the Newmarket Square area as well as public transport links as outlined by the applicant as mitigation measures for the non-provision of car parking.

Chapter 2 of the Design Standards for New Apartments Guidelines 2020 notes that it is necessary to significantly increase housing supply, and City and County Development Plans must appropriately reflect this and that apartments are most appropriately located within urban areas, and the scale and extent should increase in relation to proximity to public transport as well as shopping and employment locations. Central and/or Accessible Urban Locations are described in section 4.20 of the Guidelines as locations that are in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services. The application site is located within a 10 minute walk of LUAS at both Suir Road AND Rialto the Guidelines support the case for the reduced parking provision as part of this development. The proposed development comprises BTR apartments and reduced parking will also encourage a modal shift away from private car usage.

The proposed scheme includes no car parking spaces, which falls below the standard set out in the current Dublin City Development Plan. While it is noted that the quantum of car parking is below the maximum standard set out in the plan it is my opinion that this is not material, as it does not relate to a specific policy of the plan and furthermore Table 16.1 refers to 'maximum car parking standards'. It is also noted that the planning authority did not raise the issue of material contravention of car parking standards. I do not consider it a material contravention of the current County Development Plan. Furthermore having regard to the location of the site and proximity to public transport I consider the zero provision of parking appropriate in this instance.

#### Bicycle:

Table 16.2 sets out the cycle parking standards for various uses. For all zones residential is 1 per unit (additional requirements for larger units and visitor parking will be decided on a case by case basis). Cycle parking serving the proposed development, 238 no. spaces, with 2 additional 'cargo' bike spaces is located at ground floor level. The proposed quantum of resident cycle parking exceeds both the New Apartment Guidelines as well the Dublin City Council Development Plan requirements for cycle parking which is acceptable in my opinion.

#### Motorcycle:

Section 16.38.6 set out that new development shall include provision for motorcycle parking in designated areas at a rate of 4% of the number of parking spaces provided. I note that the planning authority did not raise the issue of motorcycle parking or of material contravention of motorcycle parking standards. Given the context of the proposed development I do not consider it a requirement. And I do not consider it a material contravention of the current County Development Plan

## **10.6 Services & Drainage**

An Infrastructure Report is submitted with this application. Irish Water and DCC Drainage Section have raised no objections subject to conditions.

It is proposed to replace the existing 6" cast iron watermain to the north of the site with a 100mm connection and water meter to Irish Water details. It is anticipated that the daily water demand for the overall development would be 58,883 litres per day based on Irish Water. In addition, water storage with the capacity of 24-hour water demand will be provided within the proposed development.

A proposed wastewater connection of 150mm diameter will connect to the existing network along Mill Street. All internal foul drainage stacks will drop to ground floor slab level and will be picked up by a network of underfloor slab internal foul drainage, which will drain southwards towards Mill Street.

Section 2.2 of the submitted Infrastructure Report states that the site of the proposed new building currently comprises buildings which utilise a combined foul and rainwater drainage pipework, which ultimately discharged into the combined sewer system on Mill Street. The applicant has outlined that prior to the construction of the proposed development, a detailed underground utilities mapping exercise shall be undertaken to establish the underground services around the perimeter of the site. And slit trenches shall be undertaken (with DCC consent and road opening licences) at the proposed foul and surface water drainage outfall locations.

Section 2.3.3 of the Infrastructure Report states that the surface water drainage system of the proposed development has been designed in accordance with the principles of Sustainable Drainage Systems (SuDS) as embodied in the recommendations of the Greater Dublin Strategic Drainage Study (GDSDS) and will significantly reduce run-off rates and improve storm water quality discharging to the public storm water system. The outfall surface water manhole for the development shall be located inside the site boundary along Mill Street, via a 225mm surface water connection. This manhole shall be constructed in accordance with Greater Dublin Regional Code of Practice for Drainage Works and will be fitted with a double sealed manhole cover.

The proposed development will comprise a new building with roof and podium drainage which will be treated as a single catchment. Surface water from the building will be directed into a proposed 60 sqm attenuation tank below the ground floor level slab, via silt trap manholes. Peak discharge to the outfall manhole is to be restricted to 2l/s by a hydrobrake manhole, which will be fitted with a double sealed manhole cover. Additional SuDS measures provided in the proposed development include a proposed 'intensive' green roof area and an 'extensive' green roof area

I note that DCC Drainage Division have not raised objections subject to standard conditions. I note the requirements of Irish Water which are recommended to be addressed by condition and consider them acceptable.

I have examined the reports on file and surface water drainage proposals, including attenuation. Based on the information before me I am generally satisfied in relation to the matter of surface water disposal and attenuation subject to standard conditions. Notwithstanding, a condition should be attached that final drainage proposals are to be agreed with the Planning Authority if permission is granted. The site can be facilitated by water services infrastructure and the Planning Authority and Irish Water have confirmed this. I am satisfied that there are no significant water services issues that cannot be addressed by an appropriate condition if the Board is of a mind to grant permission.

### **Flood risk**

A site Specific Flood Risk Assessment (SSFRA) is submitted with the application. The proposed development falls in Flood Zone C.

The submitted SSFRA noted that there is no record of flooding events in the immediate vicinity of the site. The risk of tidal flooding is considered low as the subject site lies outside the 0.1% AEP. The site is not located near any major open watercourses, however a branch of the culverted River Poddle flows beneath Mill Street. The SSFRA noted that an open part of the River Poddle is located to the south-east of the site, within the Sweeneys Corner Student Accommodation development that is currently under construction. The risk of fluvial flooding within the site is considered low. The risk of flooding due to ground water ingress to the proposed development is considered low. A new surface water system is proposed to collect rainwater from all impervious areas of the proposed building along with intensive and extensive green roof areas to reduce the developments impact on existing surface water drainage systems. All stormwater will be discharged to a Pluvial Cube Attenuation Tank and Soil Infiltration system. The risk of pluvial flooding is considered low, due to existing and proposed measures in place. All new developments are required to take climate change into consideration when assessing the flood risk of a site. When designing for extreme rainfall events an allowance of 20% additional flow should be taken. The system is designed for storms up to and including the 1 in 100 year storm and 20% extra for climate change. Hence the development can be considered to be climate change resilient.

The contents of the submitted SSFRA appear reasonable and robust. Based on all of the information before me, including the guidance contained within the relevant Section 28 guidelines, I am satisfied in this regard.

## **10.7 Ecology**

### **10.7.1 Bats:**

A Bat and Bird Assessment (dated December 2021) is submitted with the application. (refers to surveys carried out in April and May). All internal areas and attics were checked for signs of bat usage and no signs of bats were found. There were no droppings or staining. No bats emerged or returned to any building. Most of the roofs are flat, with several of metal sheeting. There is low potential for bat usage. One common pipistrelle was recorded flying over the building. The assessment included a number of recommendations for habitat enhancement in the form of bat boxes.

The report concluded that no trees of bat roosting potential were identified on site. No evidence of bats roosting or bat foraging was noted, therefore no significant negative impacts on roosting animals are expected to result from the proposed redevelopment. Notwithstanding, the applicant's report recommended that a pre construction survey should be carried out prior to the demolition of on site structures, as a precaution. If bat roosting is noted, a derogation licence will be required from NPWS prior to the demolition of on site structures.

Having regard to the foregoing I am satisfied that this can be addressed by condition if permission is granted, in my opinion.

### **10.7.2 Birds**

The applicant's Bat and Bird Assessment (dated December 2021). All buildings were examined for evidence of nesting birds, current or historic. All buildings were entered and examined for nests, birds, bird carcasses. All roofs and walls were checked for evidence of emerging or returning birds. Swift calls were sought to determine if swifts were present within the site in addition to the physical examination of the buildings. The report concluded that there were no birds nesting in any of the buildings within the site. No swifts, swallows, herring gulls or other protected species were present in the site and there were also no pigeons or other species typical of inner-city buildings. A herring gull was present on a neighbouring house but there were no nesting gulls in the site. The report included a number of recommendations for habitat enhancement in the form of swift boxes

The possibility of bird strikes/collision due to the height of the buildings has been raised as a concern in some of the third party submissions received. No significant flight paths related to protected birds have been identified in this area and the observer has submitted no evidence in relation to existence of flight paths.

The height of the tallest building within the proposed development site is 31.3m. The Urban Development and Building Height Guidelines note that an assessment of potential impact on flight lines and/or collision may be undertaken in proximity to sensitive bird or bat areas, but the guidelines are not prescriptive in this regard. The subject site is not located in such proximity and is remote from identified / designated sites for birds, and in particular migratory bird species. The site is not currently attractive for birds and no evidence has been submitted that this is a sensitive site.

The design of proposed buildings is such that there are not extensive glazed areas. While events of bird collision could still arise, I do not consider that significant impacts are likely and a condition in this regard would address residual risks arising. There are unlikely to be significant effects on any SCI species associated with any designated sites in this regard. This has not been raised as a concern by the planning authority.

### **10.8 Part V**

The applicant has submitted Part V proposals as part of the application documents. 13 units (9 no. 1 bed, 4 no. 2 bed) are currently identified as forming the Part V housing. The Chief Executive Report notes that the Housing Section confirmed the developer's agent has engaged with the department and are aware of the Part V obligations pertaining to this site if permission is granted.



I note the recent Housing for All Plan and the associated Affordable Housing Act 2021 which requires a contribution of 20% of land that is subject to planning permission, to the Planning Authority for the provision of affordable housing. There are various parameters within which this requirement operates, including dispensations depending on when the land was purchased by the developer. In the event that the Board elects to grant planning consent, a condition can be included with respect to Part V units and will ensure that the most up to date legislative requirements will be fulfilled by the development.

### **10.9 Non-Residential Use**

A c.606.1sq.m retail unit is proposed on the ground floor addressing Newmarket Square and Ardee Street. I consider the scale and location of this unit acceptable. Issues relating to shopfront and signage can be addressed by condition if a grant of permission is forthcoming.

### **10.10 Childcare**

The proposal does not include provision for a childcare facility. The applicants has set out the proposed development is not considered to generate the required demand that would necessitate the provision of a creche on site.

The Apartment Guidelines (2020) states that the threshold for provision of childcare in apartment schemes should be established having regard to the scale and unit mix of the scheme, the existing geographical distribution of childcare facilities and the emerging demographic profile of the area. The guidelines state that 1 bed or studio units should generally not be considered to contribute to a requirement for childcare provision and, subject to location, this may also apply in part or whole to units with 2 or more bedrooms.

Having regard to the guidance contained in the Apartment Guidelines and in view of the development being comprised of studios, 1 and 2 bed units and the existing available facilities in the area, I am satisfied that the omission of childcare from the development is acceptable.

### **10.11 Architectural Heritage**

An Architectural Conservation Report is submitted with the application. I note that architectural heritage was not raised as a concern in the submissions received or in the Chief Executive Report and appended reports/minutes of meetings.

The Architectural Conservation Report submitted with the application concluded that *'The development will continue the regenerative impact achieved by recent development and further assist in achieving Dublin City Council's objectives for the Newmarket area. The proposal serves to strengthen the existing urban grain and character through the introduction of a new building aligned to, and re-emphasising, the historic urban space'*.

The northern portion of the site is located within the Newmarket Conservation Area, I note that this is identified in the current Development Plan as a 'conservation area' and not an 'architectural conservation area'(ACA). I am satisfied that the proposed development has due regard to its location within a Conservation Area and will not have a negative impact on it. The Planning Authority have not raised any objection on architectural conservation grounds.

## **10.12 Archaeology**

Newmarket is located outside the walled medieval town of Dublin but within the Zone of Archaeological Potential for Dublin (DUO18-020)

An Archaeological Desktop Report is submitted with the application. I note that archaeology was not raised as a concern in the submissions received or in the Chief Executive Report and appended reports/minutes of meetings.

The DCC City Archaeologist concurred with the suggested mitigation as recommended in the report submitted (i.e. archaeological test excavation). And recommended that if permission is granted that a condition be attached requiring that the site be archaeologically tested, following which a mitigation strategy should be agreed with the Planning Authority

The submitted report included a brief of the context of the area asset out below:

- While main site boundaries date at least to the mid- 18th century, it is unlikely that any structural remnants earlier than the mid- Victorian period are present in the current site fabric
- Mill Street: a section of infill walling along Mill Street is of mortared stone construction which appears to represent the end of a calp wall, which was built up on the western side with coursed salvaged stone, not representative of the type of calp stone building of the local area. Gate piers or similar are indicated in this location on the 1866 Ordnance Survey map- they appear to have been incorporated into the boundary wall.

- Mill Street/Ardee Street: number 3 is occupied by a large warehouse/ factory building recently in use as the Liberty Community Church. It is a pebble dashed block building, with a goods entrance to Ardee Street, and windows to offices above. It has a corrugated metal louvre on the roof. The building was part of O' Keefes Fertilizer works. Constructed post- 1913, this area has no buildings on the 25in map.
- Ardee Street: The large building is of concrete, covered in pebble dash. Three houses in this area were demolished by 1909. The building post- dates 1909, and was built by 1939.
- Ardee St/ Newmarket: gable wall of building on the Ardee Street frontage is of fairly recent date. The earlier building here was a long shed along Ardee Street. Newmarket: All these buildings are 20th century in date.

The submitted report highlighted that ground preparation for the piles will entail the removal of concrete, and the excavation/ grubbing up of localized areas of ground for the piles. This will impact on the subsurface archaeological deposits, if such remain on the site. The average depth of concrete removal is estimated at 1500mm, and the trench for the connecting ground beams and the pile caps may be as much as 1000mm below this level. Therefore while no basement is proposed for this development, quite a significant amount of ground disturbance will take place. It is noted that the historic lime kiln complex, and the mid- 17th century roadway, and overlying waterlogged deposits, are of archaeological importance, and quite vulnerable in the context of this construction.

The applicant's report included recommended mitigation in the form of archaeological test excavation. The test excavation should focus on the location of the 18th century limekiln, the extent of the waterlogged deposits overlying the mid-17th century roadway, and the road itself. A detailed impact can be prepared when the piling layout is prepared, with options for mitigation being either to preserve in situ, or by record, depending on the potential for the former.

Having regard to the forgoing and noting the report from DCC Archaeology Section, I am satisfied that given the location of the site and the presence of existing structures on site and issues pertaining to potential archaeological finds can be addressed through the recommended condition if the Board is of a mind to grant permission.

## **10.13 Other Matters**

### **10.13.1 Potential Material Contraventions raised by Observers**

Observers have raised issue with the development material contravening the Development Plan provisions relating to density, as addressed in section 10.1.3 the current City Development Plan does not set upper densities

Observers have raised issue with the development material contravening the current Development provisions relating to density, the current City Plan does not set upper densities The site is not located within and ACA, therefore this does not arise in my opinion.

Observers raised that the proposed development would materially contravene Policy Objective SS02a and PM17. I have reviewed the operative Development Plan (Dublin City Development Plan 2016-2022) and I found no such policies/objectives.

#### **10.13.2 Section 49 Supplementary Development Contribution.**

The proposed development falls within the area for an adopted Section 49 Supplementary Development Contribution Scheme - Luas Cross City (St. Stephen's Green to Broombridge Line) under Section 49 Planning and Development Act 2000 (as amended). I consider this appropriate and recommend that a condition be attached accordingly.

#### **10.14 Material Contravention**

The applicant has submitted a material contravention statement in relation to the building height and justification/reason put forward relate to the relevant section 28 guidelines, regional guidelines or national frameworks. The applicant has advertised that a material contravention statement is submitted as part of the application as required under legislation.

The Material Contravention Statement also referred to unit mix, minimum apartment areas, block configuration (no. of units per access core), minimum internal apartment space standards, private amenity space and public amenity space. I have assessed all of these set out in the body of my report why I do not consider them material contraventions of the Dublin City Plan 2016-2022.

Section 37(2)(b) of the Act of 2000 (as amended) states that where a proposed development materially contravenes the Development Plan, the Board may grant permission where it considers that:

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,  
or
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government,  
or

- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan

The current application has been lodged under the Strategic Housing legislation and in respect of 37(2)(b)(1) the proposal meets the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended). The policies and objectives within Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness and the National Planning Framework (NPF) – Ireland 2040 which fully support and reinforce the need for increased residential density in settlements such as that proposed. National Policy Objective 35 of the NPF refers to such sites. I consider this to be one such site. Ultimately higher densities, result in greater numbers of people living at the right location, as well as taller buildings that should be delivered with greater unit mix and higher quality accommodation.

I have addressed all of these points in the body of my report.

Height:

Section 16.7.2 of the current Dublin City Development Plan: Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development addresses the issue of building height in the city. The Plan sets 24m as the maximum height permissible for residential developments in this area.

This proposed development with a maximum height of 9 storeys (c.31.3m) exceeds the prescribed height in the development plan (24m residential). I consider the exceedance in terms of metres proposed to be material.

The 2018 Building Height Guidelines provide that permission may be granted for taller buildings where the development management criteria in the guidelines are met, even where specific objectives of the relevant Development Plan or Local Area Plan indicate otherwise. I consider that the site is appropriate for increased height in light of guidance in the Urban Development and Building Height, Guidelines for Planning Authorities (SPPR3) particularly in consideration of the Development Management Criteria in section 3.2 of the guidelines relating to proximity to high quality public transport services, character of the location, the contribution of the proposal to the street, improvement of legibility and daylight and sunlight considerations alongside performance against BRE criteria. I have addressed compliance with criteria contained in section 3.2 in section 10.2.1 of this report. I have addressed access to sunlight/daylight in sections 10.3.3 and 10.4.4.

I am of the opinion that given its 'Z10' zoning, the delivery of residential development on this serviced zoned site would be consistent with policies and intended outcomes of the NPF and Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness. The site is located in an accessible location, served by good quality public transport in an existing serviced area. The proposal serves to widen the housing mix within the general area and would improve the extent to which it meets the various housing needs of the community. The proposed development has been lodged under the strategic housing process, which aims to fast-track housing development on appropriate sites in accordance with the policies and objectives of Rebuilding Ireland. This legislation recognises the strategic importance of such sites in the provision of housing in meeting both current and future need. The proposed development meets or exceeds to requirements set out in the Urban Development and Building Height Guidelines for Planning Authorities, Sustainable Urban Housing: Design Standards for New Apartments and the Sustainable Residential Development in Urban Areas Guidelines.

Having regard to the provisions of Section 37(2)(b) of the Planning and Development Act (as amended), I consider that a grant of permission, that may be considered to material contravene the Development Plan, would be justified in this instance under sub sections (iii) of the Act.

Observers' have commented on the legality of the S.28 Building Height Guidelines and the Apartment Design Guidelines and the ability of the Board to have regard to same in deciding planning applications, however, I consider that such matters lie outside the scope of this report.

### **10.15 Chief Executive Report**

As previously referred to in this report the planning authority are recommending a grant of planning permission subject to a number of conditions. I have addressed these in my assessment and the planning authority's rationale for same.

I note the conditions recommended in the event the Board grants permission, I consider these broadly acceptable subject to minor amendments. Where I do not consider a condition appropriate, I have addressed this in my assessment.

I have addressed issues raised in the Chief Executive Report in my assessment above.

## 11.0 Environmental Impact Assessment (EIA) Screening

The applicant has addressed the issue of Environmental Impact Assessment (EIA) within an 'Environmental Impact Assessment Screening Report' and 'Statement in accordance with Article 299B (1)(b)(ii)(II)(c)' pursuant to Planning and Development Regulations 2001 (as amended) and Section 299B(1)(b)(ii)(II)(C)' and I have had regard to same in this screening assessment. These reports contain information to be provided in line with Schedule 7 of the Planning and Development Regulations 2001. The EIA screening report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Class 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended and section 172(1)(a) of the Planning and Development Act 2000, as amended provides that an Environmental Impact Assessment (EIA) is required for infrastructure projects that involve:

- Construction of more than 500 dwelling units
- Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.

Class 14 relates to works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7. It is proposed to demolish existing structures (c.1962 sq.m) and construct 134 no. BTR apartments in 1 block including 1 no. commercial unit on a site with a stated area of c 0.32ha (nett), 0.19Ha (gross). The site is located on a brownfield site within the urban footprint of Dublin city centre. The site is located in a zone of archaeological potential for RMP DU 018-040 (burial ground) and an area of archaeological interest. The site is, therefore, below the applicable threshold of 10ha. The site currently contains disused offices/warehouses/sheds, all of which are to be demolished/removed as part of the proposed development. Having regard to the relatively limited size and the location of the development, and by reference to any of the classes outlined above, a mandatory EIA is not required. I would note that the development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The site is not subject to a nature conservation designation. The proposed development would use the public water and drainage services of Irish Water and Dublin City Council, upon which its effects would be marginal. A outline CEMP, outline CDWMP, a Bat & Bird Assessment, a Landscape Design Report, a Wind and Microclimate Study report, an Architectural Conservation Report, an Archaeology Desktop Report and a Site Specific Flood Risk Assessment have also been submitted with the applicant and an Appropriate Assessment Screening Report.

Article 299B (1)(b)(ii)(II)(A) of the regulations states that the Board shall satisfy itself that the applicant has provided the information specified in Schedule 7A. The criteria set out in schedule 7A of the regulations are relevant to the question as to whether the proposed sub-threshold development would be likely to have significant effects on the environment that could and should be the subject of environmental impact assessment. It is my view that sufficient information has been provided within the Environmental Report and the 'Statement pursuant to Planning and Development Regulations 2001 (as amended) and Section 299B(1)(b)(ii)(II)(C)' (which should be read in conjunction with each other) and other documentation to determine whether there would or would not be likely to have a significant effect on the environment.

Article 299B (1)(b)(ii)(II)(B) states that the Board shall satisfy itself that the applicant has provided any other relevant information on the characteristics of the proposed development and its likely significant effects on the environment. The various reports submitted with the application address a variety of environmental issues and assess the impact of the proposed development, in addition to cumulative impacts with regard to other permitted developments in proximity to the site, and demonstrate that, subject to the various construction and design related mitigation measures recommended, the proposed development will not have a significant impact on the environment. I have had regard to the characteristics of the site, location of the proposed development, and types and characteristics of potential impacts and all other submissions. I have also considered all information which accompanied the application including inter alia:

- Planning Report and Statement of Consistency
- Environmental Impact Assessment Screening Report
- Article 299B Statement
- Design Assessment Report
- Housing Quality Assessment Report
- Building Lifecycle Report
- Architectural Drawings
- Verified Photomontages Booklet, together with Townscape and Visual Appraisal Report
- An Infrastructure Report,
- Site-Specific Flood Risk Assessment Report,
- DMURS Compliance Statement,
- Outline Construction and Demolition Waste Management Plan,
- Outline Construction and Environmental Management Plan,
- Parking Report
- Residential Travel Plan/Mobility Management Plan.
- Engineering Drawings
- Quality Audit
- Landscape Design Report
- Archaeological Desktop Report
- Architectural Conservation Report
- Bird and Bat Assessment Report
- Justification for Build-To-Rent Housing Development Report



- Operational Waste Management Plan
- Site Lighting Report and Sustainability Report
- BTR Wind Microclimate Study
- Daylight, Sunlight and Overshadowing Study
- Natura Impact Statement

Article 299B (1)(b)(ii)(II)(C), requires the applicant to provide to the Board a statement indicating how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive have been taken into account. In this regard the applicant submitted a Section 299B Statement.

The list below relates to assessment that I have taken account of -

- The Birds Directive (Directive 2009/147/EC) and Habitats Directive (Council Directive 92/43/EEC) through the Appropriate Assessment Screening, Bat and Bird Assessment and Outline Construction Environmental Management Plan.
- The Water Framework Directive (WFD) (Directive 2000/60/EC) and The Groundwater Directive (Directive 2006/118/EC). The EIA Screening statement NIS and Infrastructure Report have been informed by the water quality status.
- The Floods Directive (Directive 2007/60/EC) Risk Assessment through the Site-Specific Flood Risk Assessment (SSFRA) and the implementation of the Dublin City Development Plan 2016-2022 which undertook a Strategic Flood Risk Assessment (SFRA).
- The Strategic Environmental Assessment (SEA) Directive 2001/42/EC through the zoning of the land for Z10 in accordance with the Dublin City Development Plan 2016-2022 which was subject to SEA.
- The Waste Framework Directive 2008/98/EC thorough the design of the proposed development and the mitigation measures set out in the Outline Construction Environmental Management Plan, the Outline Construction & Demolition Waste Management Plan, Infrastructure Report and the Operational Waste Management Plan.
- The Seveso Directive (Directive 82/501/EEC, Directive 96/82/EC, Directive 2012/18/EU). The proposed site is not located within the consultation zones, therefore, this does not form a constraint to the proposed development at this location.

The applicants Environmental Impact Assessment Screening Report under the relevant themed headings and the Statement in accordance with Article 299B(1)(b)(ii)(II)(C) of the Planning and Development Regulations 2001-2021 considered the implications and interactions between these assessments and the proposed development, and as outlined in the report states that the development would not be likely to have significant effects on the environment. I am satisfied that all relevant assessments have been identified for the purpose of EIA Screening. I have also taken into account the SEA and AA of the Dublin City Development Plan 2016-2022.

John Conway and Louth Environmental Group in their submission raised concerns that a full EIA is required (notwithstanding that the development is subthreshold) due to the nature of the development site (which currently contains identified contaminants including asbestos), the nature of the proposed development (Height) and location of the proposed development adjacent to a protected habitat. I have fully considered the potential impact arising from the construction phase and removal of materials and the Board is referred to section 10.4.5 in this report where I have addressed this. I have fully considered the potential impact arising from the proposed height of the development and the Board is referred to section 10.2.1 in this report where I have addressed this. I have fully considered the potential impact of the proposed development to the Newmarket Conservation Area and the Board is referred to section 10.11 in this report where I have addressed this. I have fully considered the potential impact of the proposed development to the Archaeology and the Board is referred to section 10.12 in this report where I have addressed this. I am satisfied that the proposed development will not a significant impact on the receiving environment in this regard. The submission also raised concerns that the Screening for EIA presented, including the Ecological report submitted is inadequate and deficit and does not permit an assessment of the potential environmental I impact of the proposed development. I draw the Board attention to the fact that an Ecological Report (as reference in the submission) is not included with this application.-With regard to the information submitted with the application and in particular the EIA screening Report and Statement on EIA Screening Process Pursuant to Article Section 299B of the Planning and Development Regulations 2001, I am satisfied that these are adequate and comply with the requirements for said documentation and has set out how the proposed development would not a significant impact on the receiving environment.

I have completed an EIA screening determination as set out in Appendix 2 of this report. I consider that the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects the impact of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency, or reversibility. In these circumstances, the application of the criteria in Schedule 7 to the proposed sub-threshold development demonstrates that it would not be likely to have significant effects on the environment and that an environmental impact assessment is not required before a grant of permission is considered. This conclusion is consistent with the information provided in the applicant's EIA Screening Report.

A Screening Determination should be issued confirming that there is no requirement for an EIAR based on the above considerations.

## **12.0 Appropriate Assessment**

### **Compliance with Article 6(3) of the Habitats Directive**

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.

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

The proposed development at Ardee Street/Newmarket/Mill Street comprised of a residential development comprising the demolition of all existing structures and hardstanding areas and the construction of 134 no. BTR apartments, 1 no. commercial unit and all associated works is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

The Appropriate Assessment Screening submitted with the application concluded that *"in the absence of mitigation, there is potential for contaminated water emanating from the development site to enter the River Liffey system and ultimately the aquatic and intertidal environment of Dublin Bay, during the construction and (to a lesser extent) operational phases of the proposed development. The significance of any subsequent effect on the qualifying interests/special conservation interests of the Natura 2000 sites would vary depending on the type of pollutant, as well as the magnitude and duration of the event. As the conservation objectives of the four identified Natura 2000 sites could potentially be affected adversely, measures are required to avoid or reduce harmful effects of the proposed project (i.e. mitigation measures). Therefore, as the risk of potential significant effects on these European sites cannot be ruled out, Section 3 of this report provides information to allow the competent authority to carry out a Stage 2 Appropriate Assessment in respect of the proposed development"*.

## **Screening for Appropriate Assessment (Stage 1)**

### **Description of Development**

The applicant provides a description of the project in section 2.2 of the Natura Impact Statement (NIS). I refer the Board to section 3 of this report.

## **Description of the Site Characteristics**

The applicant provides a description of the site in section 2.1 of the submitted Natura Impact Statement. The site has a stated area of c.0.32 ha in Dublin inner city. The site currently contains disused/vacant commercial buildings/warehouses/place of worship, all of which are to be demolished/removed as part of the proposed development. The site is almost entirely hard paved or under buildings. There are no watercourses on the site. Natural drainage of the site is towards the River Liffey, c. 900m to the north, via the Poddle River tributary. The Poddle River is nearly entirely piped underground through Dublin City and is essentially part of the Dublin City Surface Water Drainage System. The nearest portion of the Poddle that is exposed at surface level is located c. 145 m to the south-east, adjoining the Presentation Secondary School. The exposed area of the Poddle is on private third party lands that are currently being developed. There are no European sites in the immediate vicinity of the site.

### **Relevant prescribed bodies consulted:**

The submitted Natura Impact Statement (NIS) does not identify specific consultations with prescribed bodies but does refer to a desktop review of published documents and information.

In response to the referrals, no submissions in relation to biodiversity or ecology were received from the prescribed bodies.

### **Test of likely significant effects**

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).

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.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Habitat loss/ fragmentation
- Habitat degradation as a result of hydrological impacts.
- Disturbance and displacement impacts on QI/SCI
- 'In combination' effects arising from the development.

A Natural Impact Statement are submitted with the application. No Natura 2000 sites have a direct hydrological connection to the proposed development site. However, potential pathways / connections between the application site and European sites in Dublin Bay are identified via wastewater discharge from Ringsend Wastewater Treatment Plant.

### **Designated sites within Zone of Influence**

Section 2.3 of the NIS Submitted includes AA screening concluded that it is considered that the possibility for impacts on European sites is limited to the series of sites associated with the Dublin Bay complex to which the River Liffey flows. These are as follows

- North Dublin Bay SAC (code 00206)
- South Dublin Bay SAC (code 00210)
- South Dublin Bay & River Tolka Estuary SPA (code 04024)
- North Bull Island SPA (code 04006)

For completeness I have included a summary of the European Sites that occur within 15km of the site of the proposed development is set out below:

#### **SACs:**

- South Dublin Bay SAC (site code: 000210).
- North Dublin Bay SAC (site code: 000206).
- Baldoyle Bay SAC (site code: 000199.)
- Glenasmole Valley SAC (site code 001209).
- Howth Head SAC (site code: 00202).
- Wicklow Mountains SAC (site code: 002122).
- Rockabill to Dalkey Island SAC (site code: 003000).
- Rye Water Valley/Cartron SAC (site code: 001398).

#### **SPAs:**

- South Dublin Bay & River Tolka SPA (site code: 004024).
- North Bull Island SPA (site code: 004006).
- Baldoyle Bay SPA (site code: 004016).
- Wicklow Mountains SPA (site code: 004040).
- Howth Head Coast SPA (site code 004113).

However, a number of these sites do not have a connection or pathway to/from the subject site and are therefore not within the extended zone of influence of the site. Four sites in Dublin Bay with qualifying interests, which are potentially linked to the proposed development are identified as being potentially affected by the development arising from drainage from the site, foul, during construction and occupation, which are considered as external outputs from the site that could potentially extend the development's Zol.

In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site.

The development site is not located in or immediately adjacent to a European site. There is no direct hydrological connection between the site and any European site. The surface water will be retained on site and the foul sewer water will be connected to an existing public network system. As such there is an indirect connection to the Dublin Bay European sites via the foul networks via Ringsend Wastewater Treatment Plant (WWTP). Using the source-pathway-receptor model, foul waters from the proposed development will ultimately drain to Dublin Bay, located to the east of the proposed development site, and therefore may indirectly have an impact. Therefore, the European sites with qualifying interests, which are potentially linked to the proposed development are South Dublin Bay SAC (site code: 000210), North Dublin Bay SAC (site code: 000206), South Dublin Bay and River Tolka Estuary SPA (site code: 004024) and North Bull Island SPA (site code: 004006).

Given the scale of the proposed development, the lack of a hydrological connection, the dilution provided in the estuarine/marine environment and the distances involved other sites in the bay area are excluded from further consideration this screening.

I do not consider that any other European sites fall within the zone of influence of the project based on a combination of factors including the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site, aided in part by the applicant's Appropriate Assessment Screening Report, the conservation objectives of Natura 2000 sites, the lack of suitable habitat for qualifying interests, as well as by the information on file, including observations made by third parties and I have also visited the site.

| European Site Name [Code] and its Qualifying interest(s) / Special Conservation Interest(s) (*Priority Annex I Habitats)  | Location Relative to the Proposed Site |
|---|--|
| <b>SAC:</b>   |  |
| <p>South Dublin Bay SAC (site code: 000210).</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110] The NPWS has identified a site specific conservation objective to maintain the favourable conservation condition of the Annex I Habitat Mudflats and sandflats not covered by seawater at low tide [1140], as defined by a list of attributes and targets</p> <p>Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SAC has been selected.</p>  | c.6km to the southeast of the site     |
| <p>North Dublin Bay SAC (site code: 000206)</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glaucopuccinellietalia maritima) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Humid dune slacks [2190] Petalophyllum ralfsii (Petalwort) [1395]</p> <p>Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SAC has been selected.</p> | c.6km to the northeast of the site     |
| <b>SPA:</b>   |  |

|  |   |
|--|---|
| <p>South Dublin Bay &amp; River Tolka SPA (site code: 004024).</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Redshank (<i>Tringa totanus</i>) [A162] ABP-307236-20 Inspector's Report Page 46 of 56 Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Roseate Tern (<i>Sterna dougallii</i>) [A192] Common Tern (<i>Sterna hirundo</i>) [A193] Artic Tern (<i>Sterna paradisea</i>) [A194] Wetland and Waterbirds [A999]</p> <p>Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SPA has been selected.</p>   | <p>c.6km to the east of the site</p>      |
| <p>North Bull Island SPA (site code: 004006)</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Shelduck (<i>Tadorna tadorna</i>) [A048] Teal (<i>Anas crecca</i>) [A052] Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Turnstone (<i>Arenaria interpres</i>) [A169] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999]</p> <p>Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SPA has been selected.</p> | <p>c.6km to the northeast of the site</p> |

## Potential Effects on Designated Sites

Potential indirect effects on the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024), North Dublin Bay SAC (Site Code 000206), South Dublin Bay SAC (Site Code 000210) and North Bull Island SPA (Site Code 004006), relate to:



- Potential impact on habitats and/other species during construction and operational phases.
- Potential impact from water discharges during construction and operational phases.

### **Assessment of Likely Significant Effects on Designated Sites**

The proposed development will not result in any direct loss of habitat within Natura 2000 sites and no potential for habitat fragmentation is identified. Similarly, having regard to separation from European sites, construction or operational activity thereon will not result in any disturbance or displacement of qualifying interests of the identified sites. The habitats within or adjoining the site are not of value for qualifying species of these Natura 2000 sites, which are associated with estuarine shoreline areas or wetlands. The site is dominated by buildings and artificial surfaces, which do not provide suitable roosting or foraging grounds for these species. No ex-situ impacts on qualifying species are therefore considered likely.

The River Poddle and River Liffey are all in the vicinity of the proposed development. However, given the location of the site in a built-up area, there is no potential for pollution to enter the watercourses, across the terrestrial buffer.

Measure outlines in the oCMEP refer to best practice measures used for the development of any site regardless of its location. I do not consider that this measures are mitigation measures for the purposes of appropriate assessment. In my view the word has been used incorrectly. They constitute the standards established approach to developing sites and good 'housekeeping' construction works on green field site, Their implementation would be necessary for a housing development on a site regardless of the proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them whether or not they were explicitly required by the terms or conditions of a planning permission. Their efficacy in preventing the risk of storm water and wastewater runoff is managed and no off-site environmental impact caused by overland storm water flows has been demonstrated by long usage. Therefore, the proposed development would be not likely to have a significant effect the quality of the waters in the Natura 2000 sites downstream of the application site. Any potential impact would only arise if the proposed development were carried out in an incompetent manner or with reckless disregard to environmental obligations that arise in any urban area whether or not it is connected to a Natura 2000 site.

In relation to the operational phase of the development the applicants AA Screening concluded that SuDS measures will protect the local drainage network from negative impacts to surface water drainage. Again I do not consider that these are mitigation measures for the purposes of appropriate assessment. In my view the word has been used incorrectly. They constitute the standards established approach to surface water drainage for construction works on green field site, Their

implementation would be necessary for a housing development on a site regardless of the proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on a site whether or not they were explicitly required by the terms or conditions of a planning permission. Their efficacy in preventing the risk of a deterioration in the quality of water downstream of construction works has been demonstrated by long usage. Therefore, the proposed development would be not likely to have a significant effect the quality of the waters in the Natura 2000 sites downstream of the application site. Any potential impact would only arise if the proposed development were carried out in an incompetent manner or with reckless disregard to environmental obligations that arise in any suburban area whether or not it is connected to a Natura 2000 site.

Foul water will be discharged to a local authority foul sewer. The scale of the proposed development relative to the rest of the area served by that system means that the impact on the flows from that system would be negligible and would not have the potential to have any significant effect on any Natura 2000 site.

There is an indirect hydrological pathway between the application site and the coastal sites listed above via the public drainage system and the Ringsend WWTP.

Permission was granted by An Bord Pleanála in April 2019 for the upgrading of the Ringsend WWTP under ABP ref. ABP-301798-18, which works are currently underway. In granting permission, the Board undertook an Appropriate Assessment of the proposed development and concluded that that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' Conservation Objectives. Documentation and evidence provided in that case, including the EIAR, provide a reasonable basis to conclude that this proposed development would not be likely to give rise to significant effects on the conservation objectives of European Sites, either individually, or when taken together and in combination with other plans or projects. The increased loading on the plant arising from the development proposed herein will not be significant in the context of the wider city and the increased capacity of the plant.

## **In Combination/Cumulative Impacts**

Observers have raised concerns that the AA screening does not consider cumulative impacts. A number of SHD applications have been permitted in the wider area. None are within the immediate vicinity of the current site. I am satisfied that 'in-combination' effects arising from this development and others, will not result in significant effects on any European site arising from the level of discharge envisaged.

Therefore, having regard to the scale and nature of the proposed student accommodation and its location within the built up area of the city which can be serviced, I conclude that the proposed development would not be likely to have any significant effects on any Natura 2000 site, either directly or indirectly or in combination with other plans and projects.

## **Mitigation measures**

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**

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 No. 000210 (South Dublin Bay SAC), 000206 (North Dublin Bay SAC), 004024 (South Dublin Bay and River Tolka Estuary SPA) and 004006 (North Bull Island SPA) or any other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required. This is based on the following:

- The nature and scale of the proposed development on fully serviced lands,
- The intervening land uses and distance from European Sites, and
- Lack of direct connections with regard to the source-pathway-receptor model.

It is concluded that the proposed development, individually or in-combination with other plans or projects, would not be likely to have a significant effect on the above listed European sites or any other European site, in view of the said sites' conservation objectives. A stage 2 appropriate assessment (and submission of NIS) is not therefore required.

## 13.0 Recommendation

For the reasons outlined above, I consider that the proposal is in compliance with the proper planning and sustainable development of the area and I recommend that permission is granted under section 9(4)(b) of the Act for the reasons and considerations set out below.

## 14.0 Reasons and Considerations

Having regard to the following:

- (a) the location of the site in an inner city location in an area zoned for residential under Land Use Zoning Objective Z10 where residential development is permitted in principle under the Dublin City Development Plan 2016-2022.
- (b) the policies and objectives of the Dublin City Development Plan 2016-2022
- (c) The nature, scale and design of the proposed development and the availability in the area of infrastructure;
- (d) The pattern of existing and permitted development in the area;
- (e) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (f) The provision of Housing for All, A New Housing Plan for Ireland 2021;
- (g) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- (h) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;
  - i) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government 2020;
  - (j) Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013;
  - (k) The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') 2009;
  - (l) The submissions and observations received;
  - (m) The Chief Executive Report from the Planning Authority

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 15.0 Recommended Board Order

### Planning and Development Acts 2000 to 2021

#### Planning Authority: Dublin City Council

**Application** for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 12<sup>th</sup> day of December 2021 by Nrek 1 Limited care of Declan Brassil & Co. Ltd, Lincoln House, Phoenix Street, Smithfield, Dublin 7.

#### Proposed Development:

The proposed development will consist of the demolition of all existing buildings/structures on the site and the construction of a 6-9 storey mixed use building, including 134 no. 'Build to Rent' Apartments, with frontage onto Newmarket Square to the north, Ardee Street to the west and Mill Street to the south, consisting of the following:

- 134 no. Build-To-Rent (BTR) apartment dwellings, comprising 1 no. studio unit, 96 no. 1 bed units, 7 no. 2 bed (3 person) units and 30 no. 2 bed (4 person) units. The proposed apartments are primarily provided from first to eight floor level (132 no. units) with 2 no. units provided at ground floor level fronting onto Ardee Street.
- 314 sqm of private amenity space for the BTR units is provided in the form of balconies on all elevations (53 no. balconies), together with terraces to 2 no. ground floor units and 2 no. units at the 7th floor;
- 1,131 sqm of external communal amenity space for future residents is provided in the form of a podium level communal courtyard (330 sqm) and 5 no. communal garden terraces at roof level (total of 801 sqm), incorporating associated landscaping, external lighting and seating areas.
- 115.7 sqm of internal communal amenity space for future residents is provided at ground floor level, including a co-working area (60.6 sqm) and a games room (55.1 sqm).

- The main resident access to the BTR units is provided via a foyer (50 sqm) at ground floor level, incorporating a reception desk and management/maintenance office area. Ancillary services for BTR residents at ground floor level include a refuse storage area (58.3 sqm) and a bicycle storage area (184.4 sqm) accommodating 238 no. resident/visitor bicycle spaces and 2 no. spaces for cargo bikes. Additional external access to the bike and bin storage areas is provided via doors onto Mill Street.
- 606.1 sqm Gross Floor Area (GFA) of ground floor level commercial/retail space is proposed, with direct frontage onto Newmarket Square and at the corner of Newmarket Square and Ardee Street. The commercial/retail unit includes a dedicated refuse storage area (27.9 sqm) and a bike storage area (7.7 sqm) accommodating 8 no. spaces. Additional external access to the bike and bin storage areas is provided via doors onto Newmarket Square.
- The ground floor level also incorporates ancillary infrastructure/services for the building including an Energy Centre (80 sqm), Water Storage Plant (58 sqm) and 2 no. ESB substation/switch rooms. The ESB substation/switch rooms are accessed directly from Newmarket Square.

Other works include road, footpath, vehicular parking and public realm upgrade works are also proposed in the immediate vicinity of the proposed building. These proposals include the provision of enhanced pedestrian facilities along Newmarket Square, Ardee Street and Mill Street, and at the 2 no. road junctions immediately to the north-west (Newmarket Square/Ardee Street/Chamber Street junction) and south-west (Mill Street/Ardee Street/Oscar Square/Clarence Mangan Road junction) of the site, respectively. 5 no. additional car parking spaces (including 1 no. dedicated car share space) and 1 no. loading bay, together with the relocation of an existing bus stop are also proposed along Ardee Street. The proposed development also includes all associated site and development works and ancillary infrastructure including water services, foul and surface drainage and connections, attenuation proposals, lighting, landscaping and boundary treatments on a site area of 0.32 ha.

A Natura Impact Statement (NIS) has been prepared in respect of the proposed development.

The application contains a statement setting out how the proposal will be consistent with the objectives of the Dublin City Development Plan 2016-2022. The application contains a statement (Material Contravention Statement) indicating why permission should be granted for the proposed development, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act 2000, notwithstanding that the proposed development materially contravenes the Dublin City Development Plan 2016-2022, other than in relation to the zoning of the land.

## **Decision**

Grant permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

### **Matters Considered:**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

### **Reasons and Considerations:**

In coming to its decision, the Board had regard to the following:

- (a) the location of the site in an inner city location in an area zoned for residential under Land Use Zoning Objective Z10 where residential development is permitted in principle under the Dublin City Development Plan 2016-2022.
- (b) the policies and objectives of the Dublin City Development Plan 2016-2022
- (c) The nature, scale and design of the proposed development and the availability in the area of infrastructure;
- (d) The pattern of existing and permitted development in the area;
- (e) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (f) The provision of Housing for All, A New Housing Plan for Ireland 2021;
- (g) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- (h) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;
  - i) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government 2020;
  - (j) Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013;
  - (k) The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') 2009;
  - (l) The Chief Executive Report from the Planning Authority
  - (m) The report of the Inspector and the submissions and observations received;

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Appropriate Assessment: Stage 1**

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Natura Impact Statement submitted with the application, and the Inspector's report and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on any European site, in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not, therefore, required.

### **Environmental Impact Assessment Screening**

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- a) The nature and scale of the proposed development, which is below the threshold in respect of Class 10(i) and (iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- (b) The location of the site on lands zoned "Z10" where residential development and the commercial element is permitted in principle the results of the Strategic Environmental Assessment of the Plan.
- (c) The pattern of development in surrounding area;
- (e) The availability of mains water and wastewater services to serve the proposed development,
- (f) The location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended)
- (g) 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),



(h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and

(i) The features and measures proposed by applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Outline Construction and Demolition Waste Management Plan, Outline Construction Environmental Management Plan, the Operational Waste Management Plan and the Infrastructure Services Report, the Bat and Bird Assessment, Architectural Impact Assessment, the Archaeological Desktop Report, the Architectural Conservation Report, the Wind and Microclimate Study report and the Architectural Design Statement and the Landscape Design Report.

The Board 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. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

### **Conclusions on Proper Planning and Sustainable**

The Board considered that, the development could be granted subject to compliance with the conditions set out below and that the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development, would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the statutory plans for the area, a grant of permission could materially contravene the Dublin City Development Plan 2016-2022 in relation to building height. The Board considers that, having regard to the provisions of section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the City Development Plan would be justified for the following reasons and considerations:

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework (in particular objectives 27, 33 and 35), the 'Dublin Metropolitan Area Strategic Plan',

the 'Urban Development and Building Height Guidelines for Planning Authorities' issued in 2018 (in particular section 3.2, Specific Planning Policy Requirement 3).

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of clarity.

2. Prior to the commencement of development the application shall submit for the written agreement of the Planning Authority revised plan (to the appropriate scale) and particulars for
  - a) the omission of the ground floor apartments along Ardee Street and their replacement with communal amenity areas/uses to serve the development.
  - b) A site specific BTR Management Plan.
  - c) Screening to habitable rooms on the southern and eastern elevations.

**Reason:** In the interest of residential amenities.

3. This permission relates to 132 No. Build to Rent apartments and 1 no. commercial unit only.

**Reason:** In the interest of clarity.

4. The development hereby permitted shall be for build to rent units which 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 (March 2018) and not be used for short term rentals. 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.

5. 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 15 years and where no individual residential units shall be sold separately for that period. The

period of 15 years shall be from the date of occupation of the first residential unit within the scheme.

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

6. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of 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 clarity.

7. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority, prior to the commencement of any works on site. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. Render shall not be used as an external finish.

**Reason:** In the interest of visual amenity and durability.

8.
  - a) All entrance doors in the external envelope shall be tightly fitting and self-closing.
  - b) All windows and roof lights shall be double-glazed and tightly fitting.
  - c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details indicating the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the residential amenities.

9.
  - a). The Commercial unit shall not be subdivided, unless authorised by a further grant of planning permission.
  - b) No external security shutters shall be erected for any of the commercial premises (other than at services access points) unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interests of clarity.

10. No development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**Reason:** To protect the residential amenities of property in the vicinity and the visual amenities of the area.

11. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

12. Proposals for a development name, commercial unit identification 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 such names and numbering shall be provided in accordance with the agreed scheme.

**Reason:** In the interest of urban legibility.

13. Prior to the commencement of the development, the applicant/developer shall:

- a) submit revised site plan, floor plans, elevation drawings and taken in charge drawing to the planning authority for written agreement indicating that a minimum 1.8 m wide public footpath located on Ardee Street which is not over sailed by the building façade or located over any basement or similar subterranean area. The public footpath shall be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council.

- b) prior to the submission of any Road Opening Licence application, all works proposed on the public road including public pay & display car parking spaces, loading bays, road markings, junctions/kerb lines, footpaths, pedestrian crossing locations (dropped kerb and tactile paving etc.) and public lighting requirements shall be agreed in writing with the Dublin City Council Environment & Transportation Department. The applicant is advised that, in the event of a grant, all works to the public road shall in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and be at the applicant's own expense. All works shall be fully implemented prior to completion and occupation of the development.

- c) All existing vehicular entrances onto the site shall be extinguished associated

vehicular dishing removed and public footpath resurfaced and kerbing provided to the requirements of the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division. All works shall be agreed and fully implemented prior to completion and occupation of the development.

d) Details of the materials proposed in public areas, including areas to be taken in charge, is required and should be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division.

**Reason:** In the interest of orderly development.

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

**Reason:** In the interest of public health and surface water management.

15. 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 public health.

16. A final Mobility Management Plan / Residential Travel Plan shall be submitted for the development for written agreement with the planning authority prior to occupation of the development. The travel plan shall address the mobility requirements of future residents and should promote the use of public transport, cycling and walking. The residential travel plan shall, aside from the onsite car club facility, identify car club spaces outside of the development and in the vicinity of the site.

**Reason:** In the interest of orderly development.

17. A total of 240 no. secure bicycle parking spaces shall be provided within the development (these shall include Cargo Bike spaces). Design details for the cycle spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

18. The public open spaces/realm will operate as public realm in perpetuity, with public access and use operated strictly in accordance with the management regime, rules and regulations including any byelaws for public open space of the Planning Authority at all times.

**Reason:** In the interest of residential amenity and to secure the integrity of the proposed development including open spaces.

19. The landscaping scheme as submitted to An Bord Pleanála shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter his/her opinion on compliance of the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the development hereby permitted.

**Reason:** In the interests of residential and visual amenity.

20. Prior to the commencement of the development the applicant shall contact the Irish Aviation Authority in relation to all crane operations, with a minimum of 30 days prior notification of their erection. Details of a suitable marking and lighting scheme as agreed with the Irish Aviation Authority shall be submitted to the planning authority prior to the commencement of construction. Additional information regarding crane type (tower, mobile), elevation of the highest point of crane, dimensions of crane, ground elevation and location co-ordinate shall also be required by the Authority to allow for an aviation safety assessment.

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

21. 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.

**Reason:** In the interests of visual and residential amenity.

22. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably qualified archaeologist who shall carry out site testing and monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.
- (d) Agree in writing the archaeological method statements for mitigation with the Department of Culture, Heritage and the Gaeltacht, prior to commencement of any works on site

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection (in situ or by record) of any remains that may exist within the site.

23. 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.

24. Site development and building works shall be carried only out between the hours of 07.30 to 18.00 Mondays to Saturdays inclusive, 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 amenities of property in the vicinity.

25. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials 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.

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

–

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

27. 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.

**Reason:** In the interest of sustainable waste management.

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

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

29. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The



contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

30. The developer shall pay to the Planning Authority a financial contribution in respect of the Luas Cross City (St. Stephens Green to Broombridge Line in accordance with the terms of the Supplementary Development Contribution Scheme made by the Planning Authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

---

Dáire McDevitt  
Senior Planning Inspector

16<sup>th</sup> August 2022

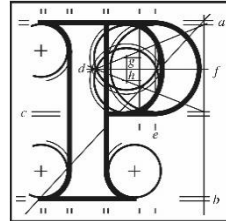
**Appendix 1** List of documentation submitted with the application  
**Appendix 2** EIA Screening Determination Form

## **Appendix 1 List of documentation submitted with the application**

Documentation submitted with the application included inter alia:

- Letter of Consent from Dublin City Council
- Cover Letters to Prescribed Bodies
- Cover Letter to Dublin City Council
- An Bord Pleanála Cover Letter and Response
- Draft Section 47 Agreement
- Part V Proposal Costings Sheet
- Planning Report and Statement of Consistency
- Environmental Impact Assessment Screening Report
- Article 299B Statement
- Material Contravention Statement
- Design Assessment Report
- Housing Quality Assessment Report
- Building Lifecycle Report
- Architectural Drawings
- Verified Photomontages Booklet, together with Townscape and Visual Appraisal Report
- An Infrastructure Report,
- Site-Specific Flood Risk Assessment Report,
- DMURS Compliance Statement,
- Outline Construction and Demolition Waste Management Plan,
- Outline Construction and Environmental Management Plan,
- Parking Report
- Residential Travel Plan/Mobility Management Plan.
- Engineering Drawings
- Quality Audit together with associated Cover Letter
- Landscape Design Report and Drawings
- Archaeological Desktop Report
- Architectural Conservation Report
- Bird and Bat Assessment Report
- Justification for Build-To-Rent Housing Development Report
- Operational Waste Management Plan
- Site Lighting Report and Sustainability Report
- BTR Wind Microclimate Study
- Daylight, Sunlight and Overshadowing Study
- Natura Impact Statement

## Appendix 2 EIA Screening Determination Form



An  
Bord  
Pleanála

### EIA - Screening Determination for Strategic Housing Applications

#### A. CASE DETAILS

|  |                       |  |
|--|-----------------------|--|
| <b>An Bord Pleanála Case Reference</b>   |                       | ABP-312268-21  |
| <b>Summary</b>   |                       |  |
|  | <b>Yes / No / N/A</b> |  |
| <b>1. Has an AA screening report or NIS been submitted?</b>  | <b>Yes</b>            | A Natura Impact Statement was submitted with the application |
| <b>2. Is a IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?</b> | <b>No</b>             |  |
|  |                       |  |

|   |            |  |
|---|------------|--|
| <p><b>3. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA</b></p> | <p>Yes</p> | <p>SEA and AA undertaken in respect of the Dublin City Development Plan 2016-2022 and see also Inspectors Report section 11 in relation to Article 299 B(1)(b)(2)(c)</p> |
|---|------------|--|

| <p><b>B. EXAMINATION</b></p>  | <p><b>Yes/ No/ Uncertain</b></p> | <p><b>Briefly describe the nature and extent and Mitigation Measures (where relevant)</b></p> <p><b>(having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)</b></p> <p><b>Mitigation measures –Where relevant specify features or measures proposed by the applicant to avoid or prevent a significant effect.</b></p> | <p><b>Is this likely to result in significant effects on the environment?</b></p> <p><b>Yes/ No/ Uncertain</b></p> |
|---|----------------------------------|--|--|
| <p><b>1. Characteristics of proposed (including demolition, construction, operation, or decommissioning)</b></p>  |                                  |  |  |
| <p><b>1.1 Is the project significantly different in character or scale to the existing surrounding or environment?</b></p>                                      | <p><b>No</b></p>                 | <p>The development comprises the construction of 132 BTR apartments (as per recommended amendments) and 1 no. commercial unit on lands where residential is permitted in principle.</p>  | <p>No</p>  |
| <p><b>1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?</b></p> | <p><b>Yes</b></p>                | <p>The proposal includes construction of a BTR residential complex which are not considered to be out of character with the pattern of in the surrounding area.</p>  | <p>No</p>  |

|   |                   |  |           |
|---|-------------------|--|-----------|
| <p><b>1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?</b></p> | <p><b>Yes</b></p> | <p>Construction materials will be typical of such urban development . The loss of natural resources or local biodiversity as a result of the of the site are not regarded as significant in nature.</p>  | <p>No</p> |
| <p><b>1.4 Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</b></p>  | <p><b>Yes</b></p> | <p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances. Such use will be typical of construction sites. Any impacts would be local and temporary in nature and implementation of a Construction Management Plan will satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p>  | <p>No</p> |
| <p><b>1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</b></p>   | <p><b>Yes</b></p> | <p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances and give rise to waste for disposal. Such use will be typical of construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature and implementation of a Construction and Demolition Waste Management Plan will satisfactorily mitigate potential impacts.</p> <p>Operational waste will be managed via a Waste Management Plan to obviate potential environmental impacts. Other significant operational impacts are not anticipated.</p> | <p>No</p> |

|  |                   |  |           |
|--|-------------------|--|-----------|
| <p><b>1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</b></p> | <p><b>No</b></p>  | <p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances and give rise to waste for disposal. And the removal of asbestos</p> <p>Such construction impacts would be local and temporary in nature and implementation of a Construction and Demolition Waste Management Plan, Construction Environmental Management Plan and Asbestos Refurbishment/Demolition Report. will satisfactorily mitigate potential impacts.</p> | <p>No</p> |
| <p><b>1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</b></p>   | <p><b>Yes</b></p> | <p>Potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised, short term in nature and their impacts may be suitably mitigated by the operation of a Construction Environment Management Plan.</p>   | <p>No</p> |
| <p><b>1.8 Will there be any risks to human health, for example due to water contamination or air pollution?</b></p>  | <p><b>No</b></p>  | <p>Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of a Construction Environmental Management Plan would satisfactorily address potential impacts on human health. No significant operational impacts are anticipated.</p>  | <p>No</p> |
| <p><b>1.9 Will there be any risk of major accidents that could affect human health or the environment?</b></p>   | <p><b>No</b></p>  | <p>No significant risk having regard to the nature and scale of the development. Any risk arising from construction will be localised and temporary in nature. There are no Seveso / COMAH sites in the vicinity of this location.</p>   | <p>No</p> |

|  |     |  |     |
|--|-----|--|-----|
| 1.10 Will the project affect the social environment (population, employment)   | Yes | Development of this site as proposed will result in an increase in residential units (132 BTR apartments) which is considered commensurate with the development of a Z10 lands in Dublin City.   | No  |
| 1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?   | No  | Current proposal is a standalone development, with small and medium scale developments in the immediately surrounding area.  | Yes |
| 2. Location of proposed  |     |  |     |
| <p>2.1 Is the proposed located on, in, adjoining or have the potential to impact on any of the following:</p> <ol style="list-style-type: none"> <li>1. European site (SAC/ SPA/ pSAC/ pSPA)</li> <li>2. NHA/ pNHA</li> <li>3. Designated Nature Reserve</li> <li>4. Designated refuge for flora or fauna</li> <li>5. Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a plan/ LAP/ draft plan or variation of a plan</li> </ol> | No  | <p>There are no conservation sites located in the vicinity of the site. The nearest Natura 2000 sites are:</p> <p>South Dublin Bay SAC<br/>North Dublin Bay SAC<br/>North Bull Island SPA<br/>South Dublin Bay &amp; River Tolka SPA</p> <p>The proposed development will not result in significant impacts to any of these sites. Please refer to the AA Screening in section 12 of this report</p> | No  |
| 2.2 Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be affected by the project?  | No  | No such uses on the site and no impacts on such species are anticipated.   | No  |

|  |                   |  |           |
|--|-------------------|--|-----------|
| <p><b>2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</b></p>  | <p><b>Yes</b></p> | <p>The site does not contain any protected structures. it is not located within a designated Architectural Conservation Area. it is located however in Newmarket Conservation Area (please refer to section... of this report) and is located within,,, Area of Archaeological Potential (please refer to section... of this report)</p> | <p>No</p> |
| <p><b>2.4 Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</b></p> | <p><b>No</b></p>  | <p>There are no areas in the immediate vicinity which contain important resources.</p>   | <p>No</p> |
| <p><b>2.5 Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</b></p>      | <p><b>Yes</b></p> | <p>There are no connections to watercourses in the area. The development will implement SUDS measures to control surface water runoff. The site is located within Flood Zone C (see also section 10.6 in the Inspectors Report in relation to services and drainage)</p>   | <p>No</p> |
| <p><b>2.6 Is the location susceptible to subsidence, landslides or erosion?</b></p>  | <p><b>No</b></p>  | <p>There is no evidence in the submitted documentation that the lands are susceptible to lands slides or erosion and the topography of the area is flat.</p>   | <p>No</p> |
| <p><b>2.7 Are there any key transport routes(eg National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</b></p>           | <p><b>No</b></p>  | <p>The site is served by a local urban road network.</p>   | <p>No</p> |
| <p><b>2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be affected by the project?</b></p>  | <p><b>Yes</b></p> | <p>There are no existing sensitive land uses or substantial community uses which could be affected by the project.</p>   | <p>No</p> |
| <p><b>3. Any other factors that should be considered which could lead to environmental impacts</b></p>   |                   |  |           |



|   |           |   |           |
|---|-----------|---|-----------|
| <b>3.1 Cumulative Effects: Could this project together with existing and/or approved result in cumulative effects during the construction/ operation phase?</b> | <b>No</b> | No developments have been identified in the vicinity which would give rise to significant cumulative environmental effects. | <b>No</b> |
| <b>3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?</b>   | <b>No</b> | No trans boundary considerations arise  | <b>No</b> |
| <b>3.3 Are there any other relevant considerations?</b>   | <b>No</b> |   | <b>No</b> |

| <b>C. CONCLUSION</b>   |            |                   |  |
|--|------------|-------------------|--|
| <b>No real likelihood of significant effects on the environment.</b> | <b>Yes</b> | EIAR Not Required |  |
| <b>Real likelihood of significant effects on the environment.</b>    | <b>No</b>  |                   |  |

| <b>D. MAIN REASONS AND CONSIDERATIONS</b>   |  |
|---|--|
| <p>Having regard to: -</p> <p>a) The nature and scale of the proposed development, which is below the threshold in respect of Class 10(i) and (iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,</p> <p>(b) The location of the site on lands zoned "Z10" where residential development and the commercial element is permitted in principle and the results of the Strategic Environmental Assessment of the Plan.</p> <p>(c) The existing use on the site and pattern of development in surrounding area;</p> <p>(e) The availability of mains water and wastewater services to serve the proposed development,</p> <p>(f) The location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as</p> |  |

amended)

(g) 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),

(h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and

(i) The features and measures proposed by applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Outline Construction and Demolition Waste Management Plan, Outline Construction Environmental Management Plan, the Operational Waste Management Plan and the Infrastructure Services Report, the Bat and Bird Assessment, Architectural Impact Assessment, the Archaeological Desktop Report, the Architectural Conservation Report, the Wind and Microclimate Study report and the Architectural Design Statement and the Landscape Design Report

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required.

\_\_\_\_\_ 16<sup>th</sup> August 2022

**Dáire McDevitt**  
**Senior Planning Inspector**

**Date**