



An  
Bord  
Pleanála

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

## **Inspector's Report ABP-312300-21**

---

### **Strategic Housing Development**

Demolition of existing buildings,  
construction of 137 no. Build to Rent  
apartments and associated site works.

### **Location**

Former G4S Property, Herberton  
Road, Dublin 12.  
([www.harbertonbridgeshd.ie](http://www.harbertonbridgeshd.ie))

### **Planning Authority**

Dublin City Council South.

### **Applicant**

Herberton Road Development Ltd.

### **Prescribed Bodies**

1. Transport Infrastructure Ireland (TII).
2. Irish Water (IW).

### **Observer(s)**

1. Aileen Burke.
2. Aisling O'Driscoll.
3. Alina Stancea.
4. Avril Tierney.

5. Barbara lawless.
6. Breda and Greg Davidson.
7. Brian Keighron.
8. Brickfield Drive and Keeper Road Residence Association.
9. Bryan Sexton and Graeme Lawless.
10. Carolyn Moore and Patrick Costello.
11. Charles Ryan.
12. Chris Duggan.
13. Christopher Carroll, David Carroll & Sophie Carroll.
14. Christy McCarty.
15. Declan and Denise Harmon.
16. Deirdre Keighron.
17. Dolores Whelan.
18. Drimnagh Residents Community Group.
19. Elaine Cahill.
20. Elaine McCaughley and Paul Madden.
21. Elizabeth Kavanagh.
22. Elizabeth Tierney.
23. Emma Lowndes.
24. Fiona Keighron.
25. Fiona Haran.
26. Fionnuala Conway and Mark Linnane.
27. Frances Hickey.
28. Gillian Bissett.
29. Helena Crotty.
30. Ingrid McElroy.
31. James O'Hara.
32. John Conway and The Louth Environmental Group.
33. John Paul Murphy.
34. Johnny and Tanya Kelly.

35. Kate Fine.
36. Katie O'Kelly.
37. Kevin Shannon.
38. Leanne Lyons.
39. Lili Tierney.
40. Linda Farrell.
41. Lisa Martin.
42. Marian Kelly.
43. Mary Murphy.
44. Maura Byrne.
45. Michael and Pauline Murphy.
46. Michael Devoy.
47. Michelle Welby and Ronan Parker.
48. Moira and Thomas Lyne.
49. Niall Hurley.
50. Niamh Gleeson and Moira Scott.
51. Olive Venables.
52. Pat Dunne.
53. Patricia Quinn.
54. Patrina Donegan.
55. Paul Howe.
56. Peg Kennedy.
57. Phillip Hannigan.
58. Rachel Smith.
59. Ronan and Beatriz Corley.
60. Sinead Atkinson.
61. Teresa and Richard Kiernan.
62. Thomas Hanlon and Olivia Barrett.
63. Tommy Jordan.
64. Valerie O'Brien.
65. Vaera Long.
66. Vicky Quigley.
67. William Loughrey.
68. Yvonne O'Kelly

**Date of Site Inspection**

8<sup>th</sup> April 2022.

**Inspector**

Daire McDevitt

## Contents

1.0 Introduction .....	6
2.0 Site Location and Description .....	6
3.0 Proposed Strategic Housing Development .....	6
4.0 Planning History.....	11
5.0 Section 5 Pre Application Consultation .....	12
6.0 Policy Context.....	24
7.0 Observer Submissions.....	37
8.0 Planning Authority Submission .....	48
9.0 Prescribed Bodies.....	57
10.0 Planning Assessment.....	58
11.0 Environmental Impact Assessment Screening.....	123
12.0 Appropriate Assessment .....	123
13.0 Recommendation.....	137
14.0 Recommended Board Order.....	137

**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 stated area of c 0.7654 hectares is located on the western side of Herberton Road c.20m south of the signalised junction with Dolphin Road (R111). At present the site contains a vacant office block and warehouses/sheds (former G45 site) which are proposed to be demolished as part of the current proposal. The site is bounded to the north and west by the rear gardens of houses along Dolphin Road. To the south by Glenview Industrial Estate, to the south of this is located along Herberton Road is Thistle House and further south again is a car sales business. Herberton Road forms the eastern boundary and is the only road frontage available to the site. The site is enclosed by high boundary walls with security fencing at the existing vehicular access off Herberton Road.

The area is considered inner city given its location south of the Canal and is characterised by a mix of commercial and industrial uses within a traditional two storey residential area. The area is one in transition and this is reflected in Variation 22 of the 2016-2022 Dublin City Development Plan which changed the zoning from Z6 to Z10. The site forms part of a larger tract of land which was the subject of Variation 22 and the requirement for a Masterplan. This wider area is bounded by Mourne Road, Keeper Road, Herberton Road and Dolphin Road.

There are a number of third party observations and these are mainly for local residents of Dolphin Road, Keeper Road, Herberton Road, Mourne Road, Herberton Drive, Rafters Road, Rialto Drive, the Drimnagh Residents Community Group and Brickfield Drive & Keeper Road Residence Association (refer to section 7 for a summary of the issues raised).

I draw the Boards attention to the various names given to the site/development which are used interchangeably throughout the documentation that accompanies the application. These include 'Gibraltar House', 'Former G45 site' and 'Harberton Bridge' (the latter refers to the name of the proposed development which is also used in the website address for this application).

## **3.0 Proposed Strategic Housing Development**

Permission is sought for:

The demolition and clearance of all existing vacant warehousing/commercial structures and hardstanding (c.4,299.9 sq.m) and the construction of a development consisting of Build to Rent (BTR) residential units (c.12,399.5 sq.m GFA (excluding basement)) comprising 137 no. apartments (8 no. studios, 74 no. 1-bed, 50 no. 2-bed and 5 no. 3-bed) in 6 no. blocks ranging in height up to 8 no. storeys over basement level (c.1,897 sq.m GFA) with private open spaces as balconies / terraces and a retail unit on ground floor level fronting onto Herberton Road (c.199.7 sq.m GFA).

The total gross floorspace (GFA) of the overall development is 14,296.5 sq.m (including basement), of which 14,096.8 sq.m is residential and 199.7 sq.m is non-residential.

The development is described on a block by block basis as follows:

**Block A** (1,337.7 sq.m GFA): 2 no. to 3 no. storey over basement apartment building consisting of 15 no. apartments with associated balconies / terraces comprising 3 no. studio apartments, 5 no. 1-bed apartments and 7 no. 2-bed apartments. Block A includes the provision of bicycle parking at basement level (110no. spaces) which is served by a dedicated bicycle lift;

**Block B** (1,481.8 sq.m GFA): 3 no. storey apartment building consisting of 17 no. apartments with associated balconies / terraces comprising 1 no. studio apartment, 8 no. 1-bed apartments and 8 no. 2-bed apartments;

**Block C** (2,152.7 sq.m GFA): 5 no. storey apartment building consisting of 25 no. apartments with associated balconies / terraces on all sides comprising 1 no. studio apartment, 10 no. 1- bed apartments and 14 no. 2-bed apartments;

**Block D** (4,083.1 sq.m GFA): 8 no. storey apartment building over basement consisting of 45 no. apartments with associated balconies / terraces comprising 2 no. studio apartments, 30 no. 1-bed apartments, 8 no. 2-bed apartments and 5 no. 3-bed apartments. Block D also includes the provision of a communal laundry room at basement level;

**Block E** (1,928.5 sq.m GFA): 5 no. storey over basement apartment building consisting of 19 no. apartments with associated balconies / terraces on all sides comprising 1 no. studio apartment, 7 no. 1-bed apartments and 11 no. 2-bed apartments. Block E also includes the provision of bicycle parking at basement level (58no. spaces);

**Block F** (1,415.7 sq.m GFA): 5 no. storey mixed-use building consisting of 16 no. apartments with associated balconies / terraces on all sides comprising 14 no. 1-bed apartments and 2 no. 2-bed apartments and a retail unit (199.7 sq.m GFA) on ground floor level facing on to Herberton Road.

The proposed development also includes the provision of internal resident support facilities and resident services and amenities, including a reception hub, parcel room, multi-purpose / screening area, laundry room, meeting rooms, bookable function rooms, work/study room, coffee facilities, games room, a gym / fitness room and a communal roof terrace at second floor level located in Blocks D and E (totalling 657.3 sq.m), as well as hard and soft landscaped external communal amenity spaces at ground level, including perimeter amenity spaces with integrated play facilities, seating areas, perimeter walk known as 'Amenity Areas' A-E and a central courtyard space (totalling c. 2,365 sq.m).

Access to serve the proposed development will be provided via a single, multi-modal, raised platform entrance onto Herberton Road at approximately the same location as the existing entrance.

The proposal includes 60 no. car parking spaces, of which 49 no. spaces are at basement level and 11 no. spaces are at surface level including 3 no. accessible car parking spaces, 5 no. dedicated car share spaces and 6 no. spaces with EV charging facilities)

2 no motorbike parking spaces and 316 no. cycle parking spaces (246 no. resident parking spaces and 70 no. visitor parking spaces) to be managed per the submitted Transportation Assessment Report.

Planning permission is also sought for all ancillary site and development works above and below ground to facilitate the development, service / plant facilities including an ESB Substation, switch room, communications room, generator room and plant rooms (totalling 276.2 sq.m), refuse stores (totalling 96.9 sq.m), public lighting, extensive boundary treatments, green roofs, rooftop PV arrays, water services and all necessary site development and infrastructural works.

The application contains a statement setting out how the proposal will be consistent with the objectives of the Dublin City Council 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.



## **Development parameters.**

- **Site Area:** 0.7434ha
- **Density:** 185 units per hectare.
- **Proposed Development:** 137 no. BTR apartments and 1 retail unit in 6 no. blocks.
- **Height:** 3 to 8 storeys (max. 26.1m)
  - Block A – 3 storey over basement
  - Block B – 3 storey.
  - Block C – 5 storey
  - Block D – 8 storey over basement.
  - Block E – 5 storey over basement
  - Block F - 5 storey.
- **Dual Aspect:** 81.8% (112 no. apartments)
- **Parking:**
  - Car – 60 no. spaces: 49 at basement level and 11 at surface level (3 no. accessible spaces, 5 no. dedicated car share spaces and 6 no. EVC).
  - Bicycle - 316 no spaces: 246 no. residential and 70 no. visitor spaces.
  - Motorbike: - 2 no. spaces.

## **Amenities:**

Internal resident support facilities and resident services and amenities: A reception hub, parcel room, multi-purpose / screening area, laundry room, meeting rooms, bookable function rooms, work/study room, coffee facilities, games room, a gym / fitness room and a communal roof terrace at second floor level located in Blocks D and E (totalling 657.3 sq.m),

### **Open Space:**

**Public Open Space:** None.

### **Communal Open Space:**

Hard and soft landscaped external communal amenity spaces at ground level, including perimeter amenity spaces with integrated play facilities, seating areas, perimeter walk known as 'Amenity Areas' A-E and a central courtyard space (totalling c. 2,365 sq.m).

**Private:** balconies and terraces.

### **Other Uses:**

Retail Unit (199.7sq.m)

### **Unit Mix:**

	Block A	Block B	Block C	Block D	Block E	Block F	Units per block	% of total
<b>Studio</b>	3	1	1	2	1	-----	<b>8</b>	<b>5.8%</b>
<b>1 Bed</b>	5	8	10	30	7	14	<b>74</b>	<b>54%</b>
<b>2 Bed</b>	7	8	14	8	11	2	<b>50</b>	<b>36.5%</b>
<b>3 Bed</b>	-----	-----	-----	5	-----	-----	<b>5</b>	<b>3.7%</b>
<b>TOTAL</b>	<b>15</b>	<b>17</b>	<b>25</b>	<b>45</b>	<b>19</b>	<b>16</b>	<b>137</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

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

## **4.0 Planning History**

### **Application Site:**

**PA Reg. Ref.3169/14:** Planning permission granted for replacing existing entrance barrier with a sliding steel gate and install new steel fencing on top of existing boundary wall, overall new height of boundary approx. 3 metres along with the installation of a new pedestrian turnstile, to the northeast corner of site elevation.

**PA Reg. Ref. 2708/10:** Planning permission granted to erect a steel security enclosure comprising of painted steel bars and similar to existing on north elevation located at ground floor level along north side and front elevations of existing building.  
**1231/08** Planning permission granted to erect steel security enclosure with pedestrian gate comprising of painted steel bars, located at ground floor level along north side elevation of existing building.

**PA Reg. Ref.6528/07** Retention permission refused for an electrical security fence to the top of existing boundary wall / fence.

### **SHD Applications in the general vicinity:**

**ABP 303435-19** refers to a 2019 grant of permission for 265 BTR apartments, a retail/café units and associated development at the Former Dulux Factory site on Davitt Road, Dublin 12.

**ABP 305061-19** refers to a 2019 grant of permission for 317 student bedspaces at No. 355 South Circular Road.

**ABP 307221-20** refers to a 2020 grant of permission for 416 residential units at the Former Bailey Gibson Site, 326-328 South Circular Road. (Judicial Review).

**ABP 308917-20** refers to a 2021 grant of permission for 492 BTR apartments, 240 BTR Shared Accommodation, creche and associated site works at the Former Player Wills site and undeveloped lands in the ownership of DCC, South Circular Road.

**ABP 309627-21** refers to a 2021 grant of permission for 188 BTR apartments and 2 commercial units at the Former Heidelberg/Miller Building and South Circular Road Garage.

**ABP 310112- 21** refers to a 2021 grant of permission for 282 apartments at the Former Eason's Warehouse, Brickfield House, Brickfield Drive, D12.

**ABP 312295-21** refers to a current application for 116 BTR apartments at 43-50 Dolphins Barn Street.

**ABP 313278-22** refers to a current application for 335 residential units at White Heather Industrial Estate, South Circular Road and 307-307a St. James's Terrace, Dublin 8.

## **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-310080-21 (on the 10<sup>th</sup> June 2021) in respect of a proposed development of 170 no. BTR apartments and associated 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 required further consideration and amendment to constitute a reasonable basis for an application for strategic housing development to An Bord Pleanála.

The following issues needed to be addressed in the documents submitted to which section 5(5) of the Act of 2016 relates that could result in them constituting a reasonable basis for an application for strategic housing development:

1. Further consideration of the requirement for a masterplan and associated level of information and consultation required, and further consideration of the impact of the development site on the masterplan area, including consideration of issues related to connectivity, level of pedestrian permeability (number and prioritisation of pedestrian connections), block and street layout, and overall open space layout/strategy.
2. While the site may be considered suitable for high density development and may be able to absorb height and taller elements within it, further consideration/justification of the documents is required in terms of design, height, massing, and materiality of the proposed blocks, including the development's relationship and proximity to boundaries with existing two storey residential dwellings and proximity to the boundary with Z10 zoned lands to the south, and an examination of the impact on the development potential of those lands to the south (particularly where no agreement is reached in relation to the masterplan layout).

The further consideration of these issues may require an amendment to the documents and/or design proposals submitted.

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. Examination of proximity of blocks to the southern boundary having regard to impacts of design/scale/massing of proposed development on the development potential of the neighbouring site (particularly where no agreement is reached in relation to the block/street layout on neighbouring site to be determined within a masterplan).
2. Examination of proximity of blocks to the north/northwest/northeast boundaries having regard to issues related to residential and visual amenity.
3. An Updated Sunlight/Daylight analysis showing an acceptable level of residential amenity for neighbours of the proposed development as well as future occupiers, which includes details on the standards achieved within adjacent properties and their gardens, and within the proposed residential units, and in private and shared open space.

4. A report that specifically addresses the proposed materials and finishes to the buildings and to the public realm. Particular regard should be had to the requirement to provide a high quality design with sustainable finishes and include details/varied finishes which seek to create a distinctive character for the overall development. This report should address the full extent of requirements of BRE209/BS2011, as applicable.
5. A Housing Quality Assessment which provides the details regarding the proposed apartments set out in the schedule of accommodation, as well as the calculations and tables required to demonstrate the compliance of those details with the various requirements of the 2020 Guidelines on Design Standards for New Apartments including its specific planning policy requirements (SPPR 7 & SPPR 8). The report shall detail the use of the residential support facilities and amenity areas used to offset the standards and/or compensatory measures proposed within the proposal.
6. A landscaping plan including details of all proposals for the communal open space. The landscaping plan will clearly indicate the quantum of open space provision having regard to any circulation space.
7. Consideration of maximisation of ground level activity within the development, specifically along the northern frontage of block DEF which addresses the main east-west access street within the development.
8. A Wind Micro-Climate study.
9. A rationale for the proposed car parking provision should be prepared, to include details of car parking management, car share schemes and a mobility management plan.
10. A building life cycle report shall be submitted in accordance with section 6.3 of the Sustainable Urban housing: Design Standards for New Apartments (2020). The report should have regard to the long term management and maintenance of the proposed development.
11. Response to issues raised in relation to transportation, parks, and water services reports, as set out in Addendum B of the CE Report, received 25th May 2021.

12. Where the applicant considers that the proposed strategic housing development would materially contravene the relevant development plan or local area plan, other than in relation to the zoning of the land, a statement indicating the plan objective(s) concerned and why permission should, nonetheless, be granted for the proposed development, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act 2000. Notices published pursuant to Section 8(1)(a) of the Act of 2016 and Article 292 (1) of the Regulations of 2017, shall refer to any such statement in the prescribed format.
13. 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.

### **Applicant's Statement**

A statement of response to the Pre-Application Consultation Opinion (ABP 310080-21) was submitted with the application, as provided for under section 8(1)(iv) of the Act of 2016. This statement provides a response to each of the specific items raised in the opinion.

#### **Item No. 1:**

The subject site has recently undergone a change to its land-use zoning as part of a series of variations to the Dublin City Development Plan ((DCDP) specifically 'Variation No. 22 – Lands at Herberton Road / Keeper Road (Glenview Industrial Estate), Dublin 12', which was driven by a detailed review of employment lands in the Dublin City Council administrative area. The intention of these variations was to release well-located, but often underutilised and low intensity employment lands to facilitate much needed residential and complementary development.

Variation 22 was adopted in March 2020 and consequently changed the subject and adjoining lands from 'Z6' to 'Z10'. The 'Z10' land use zoning contains a zoning objective 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 uses in inner city areas." The adopted Variation also introduced a requirement that a masterplan be undertaken for the rezoned lands. The applicant submits that this variation clearly affirms the development potential of the subject site and adjoining lands, and highlights Dublin City Council's commitment to encouraging and supporting their redevelopment with a focus on residential and mixed uses. The applicant submits that the requirement to demonstrate how a sustainable mix of uses will be achieved on the overall site relates to entire lands that are the subject of the variation and does not specifically require each individual planning application within the wider lands to provide a mix of uses.

As part of this application, a Masterplan has been prepared for the wider lands, which outlines a development strategy which will deliver upon the opportunities to redevelop the site as part of an integrated planning approach. The Masterplan outlines how the proposed development will contribute to achieving the aspirations of the Planning Authority to respond to urgent housing needs and deliver a sustainable residential led mixed use development. A mixture of uses can be achieved on the variation lands, with residential use focused within the central core providing a connection to the existing residential units. The non-residential uses are targeted to the areas of the land bank that benefit from street frontage to provide an urban edge to the site and provide animation at street level.

The applicant has set out that given that the lands are within various ownerships, the degree of certainty to which the applicant can deliver upon the intentions and aspirations of the Variation are outside of their control. It is argued, therefore that a prudent and flexible approach needs to be adopted and a degree of recognition that planning applications on sites within the Variation lands should not be precluded from redevelopment in the absence of certain landowners coming forward as part of a coordinated redevelopment structure.

Informed by the Authority's ambition to achieve a mix of uses on the wider lands, the Masterplan prepared has sought to prioritise residential uses, while also providing opportunities for job creation (offices), retail, services and sporting and community amenities (including public open space). The split of uses proposed as c. 15,500 sq.m non-residential (19%) and c.65,000 sq m residential (81%). It is argued that such an approach accords with the principles of both the Z10 land-use zoning (which prioritises residential, retail and office uses) and the master plan requirement (which emphasises transportation, educational, health and recreation amenities). It also ensures to protect and complement the existing service centres in the neighbouring areas of Rialto, Drimnagh and Crumlin.

The applicant submits that the application site, by virtue of its backland nature, existing ties and connections to an established residential setting and limited active frontage is more suitable for residential led development and will contribute to delivering upon the zoning objectives for the site to provide much needed housing in the area.

The proposed development is fully cognisant of site constraints and makes best use of its limitations through the design of a high-quality residential development which responds to the housing needs of the area and, by doing so, compliments existing residential land-uses in the area also.



The applicant argues that the Masterplan reflects a balanced approach to a large redevelopment land bank, with use and distribution which aligns with the spirit and principles espoused within the zoning description. It is submitted that the development proposals, if approved, will act as a catalyst for future development in the area and will help kick start development of other Z-10 zoned lands in the Masterplan.

The applicant submits that the reality with any significant city or suburban land bank is that its redevelopment is likely to be challenged by multiple landowners and/or complex lease arrangements with existing/remaining tenants. The Masterplan submitted seeks to present a concept and strategic vision, articulating the scale, massing and urban design interventions that can be realised on the lands, providing comfort of the capacity and capability of the lands to be redeveloped as a sustainable mixed use environment.

#### **Item No. 2:**

Refer to Architectural Response and the Townscape Visual Impact Assessment.

A reduction in overall height of the majority of blocks as follows:

- Reduction of Block A by 1 no. storey from 3/4 storey to 2/3 storeys overall.
- Reduction of Block B by 1 no. storey from 4 storey to 3 storeys overall.
- Reduction of Block E by 2 no. storeys from 7 storey to 5 storeys overall.
- Reduction of Block F by 1 no. storey from 6 storey to 5 storeys overall.

The proposed scheme has set out to achieve height and density above current Development Plan standards as a means to comply with national policy and guidance to sustainably and efficiently redevelop the subject site.

For justification in relation to the breach of these standards pursuant to section 9(6) & 37(2)(b) refer to the Material Contravention Statement enclosed with this application.

It is argued that given the peri-urban location of the subject site, it is within walking distance to Dublin city centre and is well served by public transport. These characteristics create an opportunity for increased building height and density through well designed residential development.

It is argued that the proposed height and massing of up to 8 storeys takes into consideration the existing context and character at each boundary, whilst also being cognisant of the fact that the site is located within close proximity to Dublin city centre. The form, massing and height of the proposals are informed by the urban design parameters of context, place-making, distinctiveness and variety in order to deliver a scheme which enhances the urban scale whilst also providing maximised access to natural daylight and minimised overshadowing.

The proposed height strategy should be considered in the context of the following points:

- The proposed development is within 500m of the Rialto Luas stop and nearby bus routes. Both public transport modes provide frequent, high capacity services (with the former being of particular strategic importance for the city). The red Luas line connects with numerous Dublin Bus routes, Heuston and Connolly train stations and the green Luas line. In addition, the site's centrality makes it feasible for many residents to walk and cycle to centres of employment and to avail of services and amenities.
- The proposed development will deliver the redevelopment of an underutilised site that is currently failing to provide any architectural or aesthetic benefits to the existing built realm, which is not noted as being architecturally sensitive. The proposal is not deemed to be on a particularly 'large' urban site. However, the approach to the architectural design has sought to redefine the subject site. The height, scale and massing of the blocks have been considered to ensure that there is variety in its form and respect for the existing built environment. Lower heights of 2 no. and 3 no. storeys in the northern blocks is a considered response to their proximity to the existing 2 no. storey residences at Dolphin Road. Height increases in the southern blocks up to 8 storeys as they transition away from the existing residences. This approach to height and massing is positive, progressive and respectful.
- The redevelopment of the site will be a significant, positive contribution to the neighbourhood and streetscape. Currently, the properties at the site are vacant and not formally maintained. None of the existing buildings at the site are of any known architectural merit and they fail to connect with the street as they are removed from the streetscape.
- The massing, materiality and fenestration of the proposed blocks will ensure that the scheme is not monolithic in its appearance (excessive, overbearing, inappropriate). The angular siting of the blocks, variation in height and punctuation of the facades ensures that there are features of interest and rhythm.

- The siting, massing and scale of the blocks have been designed so as to distribute their components and height. This will ensure that daylight and sunlight can penetrate the scheme and adjacent properties and the ventilation of the site is not inhibited (note the 'breaks' above first floor between Block D and E and Blocks E and F).

All Blocks were reconfigured, repositioned and an increased degree of articulation was introduced.

It is submitted that the current proposal does not prevent, constrain or inhibit potential future development in lands to the south. It is noted that through connection north-south is maintained in accordance with the intent of the Master Plan. This should be read in conjunction with and as an alternative scenario the intent and layouts included in the Herberton Road Master Plan-Rev B-16.04.2021.

The application lands are in single ownership and read as capable of delivery independently (serviced, stand-alone access, capable of connectivity with the wider Masterplan lands (as indicatively shown and capable of implementation with adjoining landowner agreement). It is submitted that the proposed development does not constrain or prejudice the redevelopment of industrial lands to the south, and has regard to said prospect through the use of setbacks on the application site, while the Masterplan draws on the existing access carriageway at this shared boundary to retain a setback from the property boundary when redeveloping the southern lands.

The applicant has submitted a response to items no.1 to 13 of the detailed Specific Information required in an attempt to address these matters:

**No. 1:**

The block articulation and massing has been adjusted to reduce the impact on the neighbouring residents.

Block E has been extensively reconfigured to increase the separation distance at the southern boundary and preserve the development potential of Z10 zoned lands to the south. The degree of articulation of the massing adjacent to the southern boundary has been increased such that the separation distance between Block E and the southern boundary:

- Increased from c.3m to c.6.7 m at the western edge.
- Increased from c.3m to c.4m at the central pinch point.
- Increased from c.13.3m to c.14m at the eastern edge.

Block F has been reduced in scale and reconfigured to provide increased separation distance to the southern boundary, which facilitates:

- A pedestrian through connection to Herberton Road.
- Increased separation distance at the southern boundary from c.1m to c.3 m.
- Preservation of development potential of the Z10 lands to the south of the site.

Refer to Section 2.2 of the Response (Issue 2: Building Height) for revisions to address the Board's concerns regarding the proximity of blocks and the impact of the proposed development on the masterplan lands.

Refer to the Architect's Design Statement and the Architect Drawing Pack for further detail.

#### **No.2:**

The distance between block A and the eastern boundary has been increased by c.1m at the narrowest point. Block B has been reduced in scale and reconfigured within the overall site plan to result in increased separation distances between Block B and the relevant site boundaries as follows:

- Increase at the northern boundary from c.4.7m to c.9.1m.
- Increase at the western boundary from c.5.5m to c.9.2m.
- Increase at the eastern corner from c. 4.8m to c.7.3m.
- Increase at the southwestern corner from c. 2.4m c. 3.8m.

The impact of these design changes is noted in 9.5.2 of the Architect's Design report and in the Daylight and Sunlight report. It is submitted that this item has been comprehensively addressed in that the impact on daylight/ sunlight on the surrounding residential context to the north has been drastically reduced, the visual impact of the proposal on the surrounding residential context to the north has been very considerably reduced, separation and permeability to the southern boundary have been increased resulting in the proposal placing no constraint on the future development potential of those lands to the south of the boundary.

Refer to the Architect's Design Statement and the Architect Drawing Pack for further detail.

#### **No.3:**

A Daylight and Sunlight Assessment is submitted with the application. This assessment includes analysis of the proposed development, its impact on neighbouring properties and amenity area, and the level of light which will be enjoyed by the units within the scheme.

The assessment concluded:

- The vast majority of windows on neighbouring properties would experience an imperceptible level of effect to the daylight and/or sunlight they receive. The majority of gardens of neighbouring properties would sustain an imperceptible level of effect as well.
- If the appropriate target value for LKDs is considered to be 2%, the ADF value in 317 no. habitable rooms meet or exceed their target values. This gives a circa compliance rate of 92%.
- If the appropriate target value for LKDs is considered to be 1.5%, the ADF value in 319 no. habitable rooms meet or exceed their target values. This gives a circa compliance rate of 93%. Throughout the design process, various mitigation measures were introduced to ensure the effects sustained by neighbouring properties as well as ADF levels within the proposed development were improved across the apartments.

**No.4:**

Refer to Section 6.1 of the Design Statement and section 2.2 of the Response to Bord Pleanála's Opinion.

**No.5:**

Refer to Section 8 of the Architects Design Statement for the Housing Quality Assessment (HQA).

**No.6:**

Refer to the Landscape Report and Masterplan submitted with the application.

5 no. landscaped pocket spaces and a central courtyard/plaza have been proposed, totalling 2,365sq.m and equating to a c.32% of the site area. The amenity pockets provide both active and passive in their use and purpose. They are designed in an informal way and linked to create a sense of connectivity, inclusivity and integration within the development. The approach has been to give them a sense of variety and difference, such that no two are the same in terms of their composition, components, size, light, and intimacy/openness. It is argued that the inclusion of the pocket spaces and the larger central spaces, and with the design approach adopted provides options: to play, to sit, to socialise, to relax, to exercise. And to do so in one of several area with the option of greater privacy; something that a single larger space cannot offer.

#### **No.7:**

Refer to the Architectural Drawing Pack and Architectural Design Statement which illustrates how the subject proposal maximises ground level activity within the development, particularly along the northern frontage of Blocks D,E and F.

The position and location of the internal communal amenity spaces to the ground floor of Blocks D, E and F have been further reconsidered and careful consideration given to the location and disposition of individual elements to provide appropriate activation of the street frontage. The degree of fenestration into communal spaces on the street frontage/ primary address at Herberton Road has been increased where required to enhance these spaces. The link/ hub spaces located between Block D/E and Block E/F provide an important visual, physical and active connection between the street / central amenity space and to the external communal amenity spaces to the south of the site.

In terms of ground level activity along Herberton Road, the proposed development includes 1 no. retail unit at the ground floor level of Block F. The retail element of this development has been designed to provide an active streetscape presence along Herberton Road, which will provide activity and passive surveillance of the streetscape in accordance with best urban design practice.

Refer to the Architect's Design Statement and the Architect Drawing Pack submitted for further detail.

#### **No.8:**

A Wind and Microclimate Modelling Study is submitted with the planning application and confirms that there will be no negative impacts in terms of wind and microclimate as a result of the subject proposal.

The report concluded:

- The development is designed to be a high-quality environment for the scope of use intended of each areas/building (i.e. comfortable and pleasant for potential pedestrian).
- The development does not introduce any critical impact on the surrounding buildings, or nearby adjacent roads.

**No.9:**

A rationale for the proposed car parking provision is provided in the Transportation Assessment Report.

The development includes a provision of 60 dedicated car parking spaces, 49 at basement level and 11 at surface level. This represents an overall parking ratio of 0.44 for the 137 Apartment Units.

A reduction in car parking is considered appropriate in light of the location of the proposed development adjacent high quality public transport, and in consideration of the provisions of the Dublin City Development Plan being "Maximum" standards.

Under Section 4.19, the Apartment Guidelines note that, in larger scale and higher density developments comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be wholly eliminated or substantially reduced. The applicant submits that as the site is within '22 minutes' 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 scheme is also within 5 minutes' walk of the high frequency bus services on Crumlin Road. These existing services will be further enhanced and upgraded as part of the Bus Connects Core Bus Corridor Route Plans. In addition, the site is located approximately 300m walk distance from Crumlin Road, which carries the Main D Spine Care Bus Route. The development is not a traditional residential apartment development, but is 'Build-to-Rent', and in this regard, the car parking requirements are fundamentally different, with lower anticipated car ownership and dependency for this nature of scheme. Given the low number of spaces provided (with a reduced quantum of dedicated residents parking provided), the entire scheme will be actively marketed and promoted as a "Reduced-Car-Dependency" scheme and this will be communicated from the outset as part of sales and marketing.

It is submitted that the development will be managed and operated by a Management Company. Car parking will not be an automatic entitlement with the apartments, but a limited number of spaces will be available to rent. Renting of parking will be allocated to residents mainly on a first-come first-served basis by the Management Company and will be continually managed by the Management.

The Parking Strategy presents the rationale behind the provision of vehicle parking (including mobility impaired parking, motorcycle parking, service vehicle parking and car club spaces) and cycle parking being proposed as part of the subject site development proposals. The report sets out the management measures which will be implemented to allocate the use and control the parking provided at the site.

**No.10:**

Refer to the Building Life Cycle submitted with the application. The purpose of this report is to provide an initial assessment of long-term running and maintenance cost as they would apply on a per residential unit basis at the time of application, as well as demonstrating what measures have been specifically considered to effectively manage and reduce costs for the benefit of the residents. Refer to the Estate Management Strategy submitted.

**No.11:**

- Refer to section 5 the Transportation Assessment for a response to all issues raised by the DCC transportation department.
- Refer to the Landscape Report for a response to items raised by the DCC Parks Department.
- Refer to the Water Services Report for a response to issues raised relating to drainage raised by DCC.

**No.12:**

- Refer to the Material Contravention Statement submitted with the application.

**No. 13:**

Refer to EIA Screening Report and Statement in accordance with Section 299B(1)(II)(C) submitted with the application.

## **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

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. The plan recognises the importance of providing well designed and located student accommodation in order to avoid additional pressures in the private rental sector.

## **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**

Following the adoption of variation no.22 to the Dublin City Development Plan 2016-2022 on the 10th day of March, 2020, the application site has a zoning objective 'Z10 – Inner Suburban and Inner-City Sustainable Mixed-Uses', with a stated objective 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 uses in inner-city areas.

The adopted variation also requires a Masterplan for the overall subject site and the adjoining Glenview Industrial Estate:

- Dublin City Council recognises that there is an urgent need to rezone land for housing and mixed uses to meet the demands of the City. This represents an opportunity for Dublin to rejuvenate and grow as a sustainable city comprising vibrant neighbourhoods and sustainable communities.
- Adequate transportation, educational health and recreational amenities must be included. As such Dublin City Council will require the preparation and submission of a masterplan demonstrating how a sustainable mix of uses will be achieved on the overall site as part of the integrated planning and development of the area.'
- The varied Plan requires the primary uses on these zoned lands to cater for a relatively intensive form of development. Where significant numbers of employment and or residents are envisaged, a travel plan will be required based on the provisions of the Development Plan. 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 4.5.2 of the Development Plan addressing 'Inner Suburbs and Outer City as Part of the Metropolitan Area' states that amongst other issues the overall challenge is to develop the suburbs as building blocks to strengthen the urban structure of the city and for these areas to comprise the full range of district centres.

Under Policy QH1 of the Development Plan, the Planning Authority will have regard to various Ministerial Guidelines, a number of which are listed above.

Policy SC13: 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.

Policy SC25: 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. This relates to the design quality of general development across the city, with the aim of achieving excellence in the ordinary, and which includes the creation of new landmarks and public spaces where appropriate.

Policy SN1: It is the policy of the Council to promote good urban neighbourhoods throughout the city which are well designed, safe and suitable for a variety of age groups and tenures, which are robust, adaptable, well served by local facilities and public transport, and which contribute to the structure and identity of the city, consistent with standards set out in this plan.

Policy SN2: It is the policy of the Council to promote neighbourhood developments which build on local character as expressed in historic activities, buildings, materials, housing types or local landscape in order to harmonise with and further develop the unique character of these places.

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

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

Policy QH17: To support the provision of purpose-built, managed high-quality private rented accommodation with a long-term horizon.

Section 4.5.4 deals with taller buildings and states that 'Clustering of taller buildings of the type needed to promote significant densities of commercial and residential space are likely to be achieved in a limited number of areas only. Taller buildings (over 50m) are acceptable at locations such as at major public transport hubs, and some SDRAs...There are also a few areas where there are good transport links and sites of sufficient size to create their own character, such that a limited number of mid-rise (up to 50m) buildings will help provide a new urban identity. These areas of the city are the subject of a local area plan, strategic development zone or within a designated SDRA.'

#### Section 16.7 Building Height

- Low Rise/Outer City- Maximum Height 16m/5 storeys for residential
- Within 500m of a DART station - Maximum height 24m/8 storeys for residential.

#### Section 16.7.2 Assessment Criteria for Higher Buildings

All proposals for mid-rise and taller buildings must have regard to the assessment criteria for high buildings as set out below:

- Relationship to context, including topography, built form, and skyline having regard to the need to protect important views, landmarks, prospects and vistas
- Effect on the historic environment at a city-wide and local level
- Relationship to transport infrastructure, particularly public transport provision
- Architectural excellence of a building which is of slender proportions, whereby a slenderness ratio of 3:1 or more should be aimed for
- Contribution to public spaces and facilities, including the mix of uses
- Effect on the local environment, including micro-climate and general amenity considerations
- Contribution to permeability and legibility of the site and wider area
- Sufficient accompanying material to enable a proper assessment, including urban design study/masterplan, a 360 degree view analysis, shadow impact assessment, wind impact analysis, details of signage, branding and lighting, and relative height studies
- Adoption of best practice guidance related to the sustainable design and construction of tall buildings
- Evaluation of providing a similar level of density in an alternative urban form.

#### Map J - Strategic Transport and Parking Areas

- Zone 2, immediately adjacent to Zone 1- the development is in close proximity to good public transport links. Car parking provision is restricted in Zone 2 on grounds of good public transport links
- Residential car parking standard of maximum 1 space /residential unit. Cycle parking 1 space per unit for all zones.

Other relevant sections and policies of the Development Plan include the following:

Section 4.5.3 - Making a More Compact Sustainable City;

Section 4.5.9 – Urban Form & Architecture;

Section 9.5.4 - Sustainable Urban Drainage Systems (SUDS);

Section 16.2 – Design, Principles & Standards;

#### **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 submitted a Material Contravention Statement, as provided for under Section 8(1)(iv)(II) of the Act of 2016. The statement sets out the justification for the proposed residential development, in particular the proposed:

- Height.
- Unit Mix.
- Unit Floor Areas.
- Car Parking.

which are stated to materially contravenes the Dublin City Development Plan 2016-2022

In addition to the material contravention in relation to building height, unit mix, floor area and car parking, a precautionary approach to other relevant Development Plan policies relating:

- Residential Density
- Plot Ratio and Site Coverage
- Public Open Space
- Masterplan requirement

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

##### **Height:**

Section 16.7 of the Development Plan outlines the policy provisions regarding Building Height in the City. The Low-Rise Building Height Category contains 3 areas: Inner City, Rail Hubs and Outer City. The subject site, located 500m of the Rialto Luas stop and 540m from the Suir Road Luas stop, is classified as a 'Rail Hub' which are areas "within 500 m of existing and proposed Luas, mainline, DART, DART Underground and Metro stations." As such, the building height limit which applies at 'Rail Hub' locations is up to 24 metres for commercial and residential buildings.

The proposed development ranges in height up to 8 no. storeys, over basement which delivers a scheme that is 26.1 m in height at its tallest point. In the event that the Board determine that a material contravention in respect of building height has occurred, the applicant has submitted the following justification as to why planning permission should be granted for the development in accordance with the relevant criteria as set out in Section 37(2)(b)(i) and (iii).

- The proposed development consisting of 137no. BTR residential apartments on an existing and underutilised brownfield site, which is subject to a Z10 zoning objective that requires residential led development. The site is strategically located within 500m of two Luas stops and provides access to high-capacity public transport networks.
- The proposed development falls within the definition of a Strategic Housing Development as set out under the 2016 Act and is, by definition, strategic in nature.
- The proposed development deliberately seeks to promote increased density on an underutilised brownfield site that will reduce vacancy and regenerate a derelict site at a strategic location, suitable for residential development. This in turn will contribute positively to achieving housing targets outlined in the NPF through compact growth and urban consolidation of an existing residential setting. The proposed BTR development will contribute to achieving this objective through the delivery of much needed housing that responds directly to housing supply shortage in the area. Furthermore, given the site's proximity location to employment centres, there is a direct housing demand for city centre workers. When integrated into the masterplan which requires the delivery of employment based uses together with residential development, the proposed scheme presents a viable and tangible opportunity to provide high quality housing at an appropriate scale adjacent future employment uses.
- The scheme will greatly improve the visual amenity of the area and introduce a level of activity and animation to the streetscape that will be a welcome addition to the area. In this regard and in consideration of the above it is submitted that the proposed residential led development is of strategic value and of national importance. Section 37(2)(b)(i) is therefore complied with and the Board may grant permission for the development on that basis.



- The application site is a suitable location for increased building heights and aligns with the wider strategic objectives of national planning policy. A key aim of the NPF is to support development proposals that offer a more efficient use of land, particularly those in established urban areas. In such areas the NPF expressly seeks the densification of suburban sites close to public transport and services and facilities. The application site is positioned in a strategic location in close proximity to 2no. Luas stops and is representative of the type of locations that the NPF seeks to encourage densification through the delivery of increased residential densities and building heights. It is therefore respectfully submitted that the Board apply Specific Planning Policy Requirement 3 (SPPR 3) of the Urban Development and Building Heights Guidelines for Planning Authorities (2018) under Section 28 (1C) of the Planning and Development Act 2000 (as amended) and approve the proposed development.

### **Unit Mix:**

In terms of unit mix, the Development Plan requires that each apartment development shall contain:

- A maximum of 25-30% one-bedroom units; and
- A minimum of 15% three or more bedroom units
- As the proposed development does not contain the required percentage of three bedroom units and exceeds the maximum allowance for one bedroom units as outlined in the Plan. The Board may form the view that the proposed unit mix materially contravenes Section 16.10.1 of the Development Plan. It should however be noted that the policy provision in relation to unit mix for apartment developments predates the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020) and therefore must be read in the context of Section 28 Ministerial Guidelines taking precedence over conflicting Development Plan policy objectives.
- Section 5 of the Apartment Guidelines relates to provisions applicable to Build-to-Rent housing developments and notes the role that they have to play in providing choice and flexibility to people and in supporting economic growth and access to jobs in Ireland. BTR developments can provide a viable housing option to those where home ownership is not a priority and are a prominent feature of housing provision in many countries. The Guidelines strongly encourage the promotion of BTR development by Planning Authorities and highlight their potential in contributing to accelerated housing construction at a greater scale than at present.

- The Guidelines note that where development proposals comply with the criteria of SPPR7 and are therefore deemed to constitute BTR development, they will qualify for assessment by Planning Authorities in accordance with the provisions of SPPR 8. SPPR 8 explicitly states that there are no restrictions on dwelling mix for proposals such as the application scheme that qualify as specific BTR developments.

#### **Floor Areas:**

- The policy provisions relating to the floor areas for apartment developments are set out in Section 16.10.1 of the Development Plan, which deflects to the 2015 Apartment Guidelines, although they have since been updated. However, SPPR 3 of the Apartment Guidelines notes that the minimum floor areas for studio units are 37sq.m. It is therefore considered that, whilst the floor areas of the proposed studio units may fall below the Development Plan standard, this standard is superseded by the current Section 28 Apartment Guidelines which take precedence over conflicting policies in Development Plans.
- The site is located in a 'Central and Accessible Urban Location' as defined by the Apartment Guidelines, 2020, in proximity to public transport, employment, services and facilities and is predominantly within the 500 metre walking distance of centres of employment.
- Key employment centres such as St. James Hospital, soon to be also the National Paediatric Hospital, Crumlin Hospital and the city centre are a 9-14 minute cycle from the subject site, while Grand Canal Dock, TUD Grangegorman and Ballymount Industrial Estate are all a 15-20 minute cycle from the subject site. The subject site has direct access to all of the key employment hubs in the city centre and in the adjoining city suburbs, highlighting its potential for sustainable development in line with the compact growth objective of the NFP. As such, the subject Build-to-Rent units proposed are acceptable at the subject site.
- Having regard to the above, it is considered that the proposed development which qualifies as a Specific Build-to-Rent scheme is compliant with SPPRs 7 and 8 of the Apartment Guidelines and therefore is not required to incorporate a predefined unit mix nor is the scheme required to provide a floor area of 40sq.m for studio apartments. In addition, and as required by the Guidelines, the application is accompanied by a Draft covenant confirming that the units will not be sold or rented individually for a period of not less than 15 years. This will be agreed formally post planning. This requirement supersedes and takes precedence over the Development Plan requirement to provide an agreement for 20 years.

- The proposed scheme contains a residential mix that will meet the needs and preferences of individuals and households of different sizes, life stages and incomes. The size and variety of unit types, with the option of study spaces within the residences, broadens the offering and the attractiveness of the development to different prospective occupants, while also reflecting the expected preferences of those opting for BTR housing.
- In this regard, it is the applicant's assertion that whilst a material contravention of the Development Plan has taken place in relation to unit mix and floor areas pertaining to studio apartments, the Board may grant permission for the development having regard to guidelines under section 28.

### **Carparking:**

The car parking standards outlined in Table 16.1 of the Development Plan are applied to the proposed development, a maximum parking provision of 139 no. parking spaces is required – 137no. for the proposed residential units and 2no. spaces for the proposed retail unit.

The proposed development includes a total of 60 no. car parking spaces with 49 no. spaces positioned at basement level and 11 no. spaces at surface levels towards the front of the site. The inclusion of the 60 no. spaces for the 137-unit scheme is equivalent to a provision rate of 0.44 spaces per dwelling. Excluding the car share spaces results in a provision rate of 0.40 spaces per dwellings. The Development Plan outlines how the recommended parking standards are maximums and that a reduction below these standards may be permissible for certain types of development proposals at locations that benefit from access to high quality public transport.

- It is submitted that the Plan contains the appropriate level of flexibility in applying car parking standards to new development proposals and, as such, the proposed scheme does not materially contravene the Development Plan insofar as car parking provision is concerned. Nevertheless, the inclusion of car parking within this Material Contravention Statement has been done on a precautionary basis should the Board be minded that a contravention has taken place.
- It is argued that there is an established precedent for car parking ratios of between 0.3 – 0.5 within the vicinity of the application site which support the proposed ratio of 0.44 spaces under this application.

Having regard to the above, it is submitted that the proposed parking provision does not materially contravene the standards outlined in the Development Plan. Nevertheless, should the Board be minded to conclude otherwise, the above provides a comprehensive justification to enable the Board to grant planning permission for the development in accordance with the provisions of Section 37(2)(b) of the Act.

### **SHD Precedents:**

Reference to permitted SHD application to illustrate what the applicant submits is a shift in planning policy away from a focus on blanket numerical restrictions (height and density) towards a more evidenced based assessment approach to development. It also how the pattern of development in the area is, and is planned on, changing and evolving to reflect national policy objectives and a widespread recognised need to deliver housing at appropriate scales and densities to promote an efficiency of land use.

### **Conclusion:**

It is submitted that the proposed scheme is compliant with national and regional policy objectives that seek to promote compact urban growth, encourage more efficient use of serviced land, and support the densification of lands within an established urban setting and along public transport corridors. It is considered that a comprehensive and logical justification that supports the proposed development in the context of a material contravention of the Dublin City Development Plan 2016-2022 in respect of height, car parking, public open space and dwelling mix has been set out. The ever evolving and changing planning landscape has moved to recognise the merits of increased heights and densities on highly accessible urban brownfield sites such as the application lands. The proposed scheme will contribute to the delivery of national objectives seeking compact urban growth and provide a sustainable residential community in an established residential setting and it is respectfully submitted that permission be granted on that basis.

## **6.6 Designated Sites**

The proposed development is not in or adjacent to any Natura 2000 site. The following sites are identified within 15km of the site:

SAC:

- 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).
- Knocksink Wood SAC (site code 000725).

SPA:

- 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).

## **7.0 Observer Submissions**

The Board received 70 valid submissions, these included 2 from Prescribed Bodies (refer to section 9 of this report) and 68 observer submissions which I propose to summarise in this section.

63 submissions are from local residents of Dolphin Road, Keeper Road, Herberton Road, Mourne Road, Herberton Drive, Rafters Road, Rialto Drive with one from a resident of Chapelizord whose parent remains in the area.

2 of the submissions have been received from local residents' associations/groups: Drimnagh Residents Community Group and Brickfield Drive & Keeper Road Residence Association.

There is a significant degree of overlap and reiteration of issues raised in the submissions from local residents and local groups and I propose to summarise these by topic rather than individually.

2 submissions have been received from political representatives: Cllr Paul Dunne and a joint submission from Cllr Carolyn Moore & Patrick Costello TD.

A submission is also received from John Conway and the Louth Environmental Group (BLC Solicitors), this relates inter alia to material contraventions of the plan, status of section 28 Guidelines, EIA, AA and validity of the application.

In summary the topics raised are summarised below and are dealt with later in the assessment that follows.

### **Material Contravention of the Dublin City Development Plan 2016-2022:**

- The proposed development materially contravenes the density, housing mix, provision of public open space, carparking, provision of childcare and 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 contravention 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.

#### **Land Use Zoning and Variation No. 22 of the Dublin City Development Plan 2016-2022.**

- The application does not meet the criteria for the recent change to Z10: Inner Suburban and Inner City Sustainable Mixed Uses. There is no reasonable level of information available and no satisfactory consultation with the neighbouring site regarding the Masterplan.

- The Application does not fit in with the inter connectivity outlined in the National Framework Plan, the National Transport Authority, the DCC Development Plan on Streetscape and also the Inner-City Rail Hub Connectivity.
- If the applicant had liaised with other owners in consultation with Glenview regarding a Masterplan, a centralised traffic system plan could have been executed to include one access route in and one access route out Glenview where appropriate walkways would co-exist, in line with the EU Directive on Open & Green spaces, the DCC Development plan on integration of new & old buildings & inhabitants.
- Lack of consultation in the preparation of the Masterplan.
- The masterplan was not submitted to the Council for approval.

### **Height**

- The height of the buildings exceeds the DCC Development Plan (26.7m instead of 24m) and also breach the National Spatial Guidelines and National Framework Plan.
- The proximity to the local rail hub has been blatantly exaggerated by 100-200m in the application (Should be within 500m of a rail hub) .
- The height is not in keeping with the area and existing heights.
- The site is bounded by the Grand Canal and will have a negative impact on it.

### **Scale of Development:**

- The density and façade set to sit 5 stories on the existing boundary is not in context with the streetscape and does not graduate from the two storeys to create an appealing view. It directly faces residents on the opposite side of the road.
- Query the Visual Image Photo Montages submitted.
- The site does not have the capacity to absorb the scale of the development proposed.
- Height, scale and mass is unsuitable.
- A reduced scale of development would provide a greater continuation with the local area and keeping with the aesthetics of the local community.

### **Unit Mix:**

- The inclusion of over 60% of the development in studio and 1 beds (82 out of 137 apartments) versus 4% in 3 beds is contrary to Dublin City Development Plan and Apartment guidelines.

### **Open Space:**

- There is a lack of public space in this area to support 137 new homes with a potential 350 plus new residents. The lack of available permeability in the complex breaches the EU directive on Open/Green spaces.

- The shared indoor recreational spaces in the plan: retail space, gym, meeting areas etc have no accurate spatial measurements. These cannot serve as a substitute for safe available outdoor space. There are no large pathways for amenities for teenagers which breaches the Directive on The Right to Play for Children. There is really just access for pedestrians and vehicles apart from small tracts of peripheral boundary landscaping and a small communal area. The plans exploit the universal design idea of shared space to exhibit vehicular access routes as multipurpose.
- 44.8% of open spaces within the development will receive less than 2 hours of sunlight after March 21<sup>st</sup> and less during the winter months which is not acceptable.

#### **Impact on adjoining properties:**

- Loss of privacy contrary to EU Directives on human health.
- Devaluation of adjoining houses given the loss of privacy and light.
- Proximity to properties at 45-95 Dolphin Road. The density and façade set to sit 5 storeys on existing boundary wall (Herberton Road) is not in context with the streetscape and does not graduate from the two storeys to create an appealing view.
- The proposed development distances from existing resident's boundary walls of 3.7m and 11m is overbearing and high density for the location.
- Reference to section 7.4 of the Sustainable Residential Guidelines which refers to adequate separation distances at the rear of dwellings.
- The application has not addressed concerns raised at pre-application stage relating to proximity of the blocks to the north, northeast and northwest boundaries.
- The proposed development is directly on to the street on Herberton Road and is too close to the boundary walls of houses on Dolphin Road, it overlooks and blocks light to existing residential dwellings and gardens, compromises the potential development of the Glenview Industrial Estate and add to the overbearing nature of the proposed development.
- The application does not address ABP's concerns in Inspector's Report about proximity of blocks to North, North East and North West boundaries.
- In line with the EIA which is an EU Directive on Human Health. proximity to homes on Dolphin Rd should not inhibit natural light essential for Vitamin D & K levels in humans. Seems to be 1 & 1/2 hours in Winter and 2 1/2 hrs in Summer only.
- A communal roof terrace at second floor level located in Blocks D and E (totalling 657.3 sq.) will create noise and invade the privacy of existing residents on Dolphin Road.

#### **Tenure:**



- Build to rent does not provide any long-term security of tenure in this multi-generational neighbourhood where growing families depend on relatives for childcare and support. It creates a transitory population with little or no hope of apartment residents integrating into the community.

#### **Social Infrastructure:**

- There is a lack of local amenities to support the development. There is no supermarket nearby and there is no confirmation was given as to what retail service would be available in line with community requirements in the area.
- Lack of local amenities to support the development.
- No evidence provided to show a sufficient supply of local childcare facilities.

#### **Traffic & Transportation:**

- No Traffic Management Plan dealing with the access for parking and in/out routes to the underground car park that will impact on the flow of traffic outside the complex. The proposed development access is too close to the traffic lights. It will cause congestion and contravene safety for road users. Herberton Road is a main artery to two local emergency hospitals so there are more serious implications of any potential stop to the traffic flow at this narrow junction. The junction at Herberton Rd also does not have any pedestrian lights.
- There is below adequate parking for existing residents in the area and the proposed 50 or so spaces will not service 137 new residences.
- The junction at Herberton Road and Dolphin Road has no existing pedestrian crossing which residents have raised with DCC for years.
- Proposed access to and exit from a development of this size is unsafe. It is too close to the junction at Dolphin Road and the traffic lights. There are no cycle lanes on Herberton Road and no pedestrian lights at the Dolphin Road Junction. Herberton Road is used by ambulances as a main artery to St. James Hospital and by children attending school at Loretto on Crumlin Road. Further congestion of this road is not in the interest of the community.

#### **Ecology:**

- The tree survey must be up to date also which it is not and there is an existing swift population in the area so plans should be amended to include swift boxes.
- The bat report is outdated (20<sup>th</sup> Sept 2020). September is not the optimum time to carry out a survey as bats are very close to hibernation. Despite the findings of the survey, residents have observed bat activity in this area.
- Observers will be taking advice from the national parks and Wildlife Service.

#### **Waste Management:**

- The Operational Waste Management Plan outlines that the industrial waste wheelie bins will be moved out onto the sidewalk to be collected. There is no set down area to the front of the buildings (loading bay) for retail deliveries or bin collection. The suggested drop zone for the bins would impact on traffic on Herberton Rd & the Traffic Junction and be foul smelling for neighbouring residents and pedestrians. The waste should be managed and collected ON site.
- Dust abatement and noise control regulations will be breached with proximity to existing residents and new residents under EIA. The air pollution, noise and dirt during demolition and construction will be amplified by the fact that the site is landlocked by boundary houses on three sides.

#### **Flood Risk:**

- No Flood Risk Assessment was carried out and the SUDs plan for surface water wasn't sufficient. Photographs submitted to illustrate flooding experienced.
- Drainage has for years been a problem and there is a history of flooding and overflowing shores directly on Herberton Rd and Dolphin Rd. With the scale of proposed development there is a certain increased risk for flooding of properties neighbouring properties.

#### **Nuisance during Construction & Operation Phase:**

- Any site activity approved for this site should only be allowed to happen from 8am onwards. We have observed the negative impact on residents in other neighbourhood developments that start officially at 0700 which brings activity to the neighbourhood from 6.30am.
- A Noise and Vibration Management Plan should be drawn up and if planning approved then British Standard BS 5228:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites Part 1: Noise (2014) should be a condition of planning.
- Solid hoarding/barriers should also be required to be erected around the site boundaries close to residential properties.
- As a former industrial estate and unoccupied premises the Construction and Waste Management Plan is remiss in that it does not contain a section on same which again should be an itemised requirement if planning approved, and location of bait points agreed with neighbouring residents.
- Whilst the Preliminary Construction Management Plan does reference the appointment of a construction liaison person a resident project monitoring committee should be established with access to complaints log and mitigation measures taken and whose concerns are addressed in a timely and considerate fashion by the Contractor.

- A clear timeline should be provided to residents for each phase of the development and potential impacts explained clearly.
- If permission is granted, hours should be the same as made by An Bord Pleanála previously for other developments i.e., that Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays with deviation only allowed in exceptional circumstances with prior written approval.
- Concerns raised regarding public health and the health of residents bordering the site during demolition and construction as this area has a very high elderly population and adults and children who have underlying health issues. A comprehensive dust and air monitoring plan should be required, including the use of dust barriers/sheeting as building erected. Dust monitors should be employed and placed in locations close to adjacent residents and results available to them.
- Dust abatement and noise control regulations will be breached with proximity to existing residents and new residents under EIA.
- Air pollution, noise and dirt during construction will be amplified by the fact that the site is landlocked and bounded by houses on three sides.
- Piling will cause damage to boundary walls. A structural engineering survey of the walls should be carried out before the commencement of any demolition or construction and if needs be, boundary walls made secure and/or heightened.
- Potential structural damage to adjacent residential dwellings. The applicant has made no reference to the possibility of damage to adjacent properties be it structural, to the fabric of the building or its boundaries from heavy machinery, construction traffic, interference with soil due to pile driving and the creation of an underground carpark and associated building services.
- The constructing piling phase is likely to cause damage to the structure of boundary walls to houses along Dolphin Road due to their proximity. A structural engineering survey should be undertaken of all boundary walls before any work commences and if needs be boundary walls made secure and reinstated to original height. This survey should be made available to affected residents for consideration and agreement. All costs for engineering surveys and remedial or replacement works to be fully covered by the Developer and/or landowner.
- Regarding the proposed operation phase, the Property Management Company should include in their management plan as to how they will liaise with the external neighbours and how any concerns which may arise when the property is occupied will be addressed i.e., communication avenues and the way concerns/complaints will be handled.

**Infrastructure:**

- Many services within the locality are at cracking point, most of the properties are still on lead pipes on the private and public side of the water main. These services in their existing state are already problematic and will be under severe pressure to provide adequate levels of services under the strain of such a large new development connecting to the existing supply.

**EIA Screening:**

- No EIA was submitted.
- The Waste Management Plan was not completed in line with the Environmental Impact Assessment.
- 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 as 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).
- The EIAR is inadequate and deficient and does not permit an assessment of the potential environmental impacts of the proposed development.
- Notwithstanding that the proposed development is sub-threshold for the purposes of requiring a 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), the 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.
- It is impermissible for the purposes of EIA screening for certain matters, not detailed in the documentation presented, relevant to the impact of the development on human health (such as noise/dust etc) to be left over to be determined by the contractor. Insofar as it is proposed or envisaged in the said plans/programme that certain matters be left over for agreement with the planning authority, due to lack of detail and/or thresholds in respect of same, such an approach is contrary to the requirements, including public participation requirements, of the EIA Directive, in circumstances where there is no mechanism for the public to participate in the process leading to the agreement with the planning authority under the 2016 Act and in circumstance where there is a distinct lack of detail in the information provided that would provide clear criteria for matters to be so agreed. If the Board was minded to impose such a condition, in light of the foregoing, it would effectively be abdicating its responsibilities under the EIA Directive.
- 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 in 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].
- 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.

**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 fails to 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.

#### **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

#### **Other:**

- No archaeology report submitted.
- The wheelchair transfers space as indicated on the plans in all bathrooms is not sufficient to accommodate a visiting wheelchair.
- No Emergency Disaster Plan was submitted in line with Fire Safety, Access for Emergency Services and the proximity of buildings to each other are not in line with Construction Regulations.
- The Draft 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.

## 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 18th February 2022. The planning authority has raised serious concerns with regard to the proposed development submitted. 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 East Area Committee (20<sup>th</sup> January 2022). (10 no. Cllr recorded in attendance). 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 addresses in detail views relating to:

- Height & density
- Design & Layout
- Masterplan for Site & Re-zoning.
- Transportation Planning
- BTR Model
- Part V allocation

Below is a broad summary of the views of the relevant Elected Representatives:

- None of the members present supported the application.
- The proposed development was in contravention of the City Development Plan, was too high, too dense, and out of context for the area and would negatively impact the amenities of local residents.
- The application should be totally rejected as it fails to meet the zoning requirements of producing a proper masterplan following consultation with all stakeholders and even by their own admission the applicants haven't done so. The separation distance to adjacent dwellings and distance to boundary walls was stated to be far too short and unacceptable.
- Critical of the high proportion of studio and one bed units which is not sustainable.
- Concern was expressed at the very high proportion of build-to-rent developments which was stated to be developer led and not good or sustainable for the future development of the city.



- Concerns about the lack of community infrastructure, the negative impact on traffic and public transportation and insufficient provision of communal open space.
- Critical of the lack of community gain and lack of any prior consultation with the local residents and community groups.
- Concerns about the impact on flooding in the area and the proximity of site to houses which are over 100 years old.

### **8.3 Planning Assessment**

#### **Zoning:**

Variation No. 22 of the Dublin City Development Plan 2016-2022 which was made by the City Council on 10th March 2020, changed the Land Use Zoning Objective of the subject site and adjoining lands at Herberton Road / Keeper Road (Glenview Industrial Estate) from Z6 to Z10 – ‘Inner Suburban and Inner City Sustainable Mixed Uses’.

The Z10 Land Use Zoning Objective 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 uses in inner city areas.*’ And added a requirement for a Masterplan for the overall site.

The Planning Authority notes that while residential and commercial uses are deemed permissible in principle under the Z10 land use zoning objective, there are concerns regarding the limited mix of uses proposed within the development. With the exception of just one commercial unit fronting Herberton Road, which has an overall floor area of c. 200 sqm, the development is entirely residential. There are concerns that the proposal does not in accordance with the ethos of the Land Use Zoning Objective.

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

In terms of density, site coverage and plot ratio the development accords with the indicative ranges as outlined in the Dublin City Development Plan 2016-2022. However as noted in the Development Plan, compliance with other development standards is required to ensure an appropriate level of development.

Variation 22 has the added requirement of a masterplan. The applicant has submitted a masterplan in conjunction with the SHD application as per the requirements of Variation No. 22 of the City Development Plan 2016-2022. The masterplan includes the wider Herberton Road/Keeper Road (Glenview Industrial Estate), all within the boundary of the Z10 zoning objective adopted under Variation No. 22 of the City Development Plan.

**Variation 22 of the Dublin City Development Plan 2016-2022 and Masterplan requirement:**

The Planning Authority noted third party concerns regarding the masterplan. The purpose of the provision of a masterplan as provided for under Variation 22 of the Plan is to ensure that an integrated approach is taken to the delivery of a sustainable mix of uses on the overall lands thereby ensuring that adequate transportation, educational, health and recreational amenities are included in the development of the area.

The submitted masterplan has not been agreed by the Planning Authority, stakeholders or in consultation with the adjoining landowners and as such the planning authority has raised fundamental concerns regarding its validity. Serious concerns remain regarding proposed mix of uses, layout, height strategy, legibility, permeability, connectivity, open space, access and car parking as indicated in the submitted masterplan.

### **Layout:**

The planning authority has serious concerns regarding the separation distances achieved between the blocks and to the boundaries of the site. Given the proximity to the site boundaries it is considered that the proposal would have a negative impact on adjoining residential amenity and would compromise the development potential of the adjoining lands to the south.

There are also serious concerns regarding the position of the blocks on the subject site and the resulting impact on legibility, connectivity and permeability to the main bulk of the masterplan lands to the south.

Concerns regarding legibility, permeability and connectivity. The proposed links are located between Blocks C and D in the south-west corner of the site, with a second link now proposed to the rear of Block F from a perimeter amenity area which has no direct connection to the access street. The links are not legible from the main access route through the site.

The planning authority is not satisfied that it has been demonstrated that the site layout has been considered as part of an overall strategy for the masterplan lands and the site layout is therefore not acceptable. Further consideration of masterplan and site layout is required to ensure the coordinated and integrated planning and development of the area.

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

The applicant states that the site is located within 500 metres of the Rialto Luas stop and is therefore considered to be located within a Rail Hub (i.e. within 500m of existing and proposed Luas, DART, DART underground and Metro Stations). Third party comments regarding distances to Rialto and Suir Road LUAS stops are noted. The distance from the proposed entrance to the development and the nearest LUAS stop, Rialto, is 517 metres 'as the crow flies', the actual walking/cycling distance is along Herberton Road to the LUAS stop is 620 metres. Section 16.7 of the Development Plan relates to building height and establishes a 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 development consists of 6 no. development blocks which range in height from 2 to 8 storeys. Block D is the tallest block in the proposal. The 8 storey block has maximum height of 26.1 metres. In this context, it is considered that the proposed development contravenes the provisions of the Dublin City Development Plan 2016-2022.

The planning authority has concerns regarding the height, scale and mass of the proposal. The blocks are placed on an east/west axis on the site, with the longest elevations of Blocks A and B and Blocks D and E facing towards the canal, directly south of the rear gardens of the two storey dwellings which front onto the canal. Given the scale and mass of the blocks which range in height from 2 to 8 storeys, the length of blocks (Blocks D, E and F are physically linked at lower levels and have a combined length of circa 95 metres) and the proximity to adjoining property, there are concerns that the development would have a negative visual impact and would appear excessively overbearing in terms of adjoining property.

The planning authority do not consider that the applicant has demonstrated that the proposal satisfies the development management criteria as outline in Section 3.0 of the Height Guidelines. The site is situated just south of the Grand Canal and sizable structures are proposed for the site of a much greater height, scale and mass than the surrounding urban structure which is predominantly residential in nature, made up of two storey terraced dwellings.

Given the urban context of the site, the planning authority has serious concerns regarding the form, scale, height, bulk and mass of the proposed development in relation to the prevailing local height. It is not considered that the proposal provides an appropriate transition in scale and therefore does not respond to the local character, scale and landscape of the surrounding urban context. It is considered that the proposal is over-bearing, excessive, out of scale and out of character in comparison with the prevailing architectural context.

#### **Public Open Space:**

Public open space is not proposed within the development. The Development Plan standards requires a provision of 10% public open space. The applicant states that it has not been possible to provide open space on the site given the size and location of the site and form of the development.

The Parks and Landscape Services Division require a financial contribution in lieu of the provision of public open space.

### **Communal Open Space:**

In terms of communal open space, the applicant states that a total of 2365sqm has been provided this includes the central courtyard between Blocks A-C, and a series of communal seating and play areas located around the perimeter of the site.

The planning authority has concerns that apart from the central courtyard which has an overall area of 665sqm, much of the communal open space is left over space on narrow tracts of land between the Blocks of apartments and the perimeter boundary walls. While in terms of quantity the provision of the communal open space may be acceptable there are concerns regarding the quality of the communal open space.

### **Children's Play Spaces:**

Section 16.10 of the Development Plan sets out guidance for communal open space which requires that schemes of 100 or more apartments should include play areas of 200-400sqm for older children and young teenagers within the areas of communal open space. The planning authority noted that a play areas are provided throughout the scheme with a total stated area of 243 sqm provided.

### **Daylight, Sunlight Analysis:**

The Daylight/Sunlight Assessment Report submitted by the applicant indicates that not all communal open space within the proposed development would receive at least 2 hr of sunlight on the 21st March as set out in the BRE guidelines. Of the 7 no. areas provided only 3 no. areas achieve 2 hrs of sunlight on the 21st March over 50% of the area. It is noted that only 44% the main central communal open space area receives 2 hrs of sunlight on the 21st March. Given that the central open space area is the primary area of open space within the scheme, The Planning Authority note that it is not considered acceptable that it does not meet the required minimum standard in relation to sunlight.

The planning authority recognise that the height of the blocks directly to the rear of the existing houses on Dolphin Road have been reduced by one floor from that previously presented during the pre-planning stage. The impact of the development on the sunlight levels has improved accordingly. Of the 49 no. surrounding gardens assessed 3 no. would be slightly impacted, with 1 no. garden referred as being moderately impacted upon.

The Daylight/Sunlight Report tests the ADF of all habitable rooms across the development. The report states that 92% of the rooms tested have an ADF values above 2% for living/kitchen/dining rooms in line with BRE guidelines.

**Wind and Micro-Climate Study:**

A Pedestrian Comfort CFD Analysis was submitted. The report indicates that the site shows compliance with Lawson's long term siting comfort criteria across the development with the exception of some locations to the south of the site standing or short term siting criteria is met. The proposed landscaping incorporates mitigation measures such as hedges, trees and shrubs to mitigate wind exposure to both public and private realms at ground floor level.

The study does not assess sitting comfort on balconies or the roof terrace and in this regard the planning authority has some concerns regarding the balconies located on the north side of Blocks D which are situated above the areas indicated as meeting Lawson's criteria for standing or short term siting and the roof terrace. Consideration should be given to additional screening measures of balconies and terraces which do not meet Lawson's sitting comfort criterion.

**Impact on Residential Amenity:**

The planning authority has serious concerns regarding the impact of the proposed development on adjoining residential amenity. Blocks A and B which are 3 storeys in height are located a minimum of 3.4 metres from the shared rear boundaries of the dwellings on Dolphin Road. Notwithstanding the length of the gardens of the existing dwellings, it is noted that habitable rooms, balconies and walkways directly overlook third party private open space. Therefore, it is considered that the proposal would have a detrimental impact on adjoining residential property by overlooking and overbearance.

Blocks C, D and E are a minimum 2.9 metres from the boundary to the south and comprise balconies and terraces fronting into the adjoining property over a maximum of 8 storeys and includes a roof terrace. Given the separation distance the planning authority has concerns that the proposal will negatively impact on the future development potential of the adjoining site.

The planning authority also has concerns regarding the separation distances between the individual blocks and the impact on future residential amenity. The separation distance between opposing balconies and habitable rooms of Blocks B and C is 5 metres, while a separation distance of 4.8 metres is achieved between opposing balconies of Blocks C and D. It is therefore considered that proposal would have a negative impact on future residential amenity within the development.

**Community Facilities and Social Infrastructure:**

A Community and Social Infrastructure Audit is submitted with the application as per requirements of Section 16.10.4 of the Dublin City Development Plan 2016-2022.

The report does not identify any deficits in local services. In terms of childcare the applicant states that the demand of 11 no. childcare places could be easily accommodated locally. It is noted that the applicant has not identified the class of uses proposed for the commercial unit. The planning authority has no objection to the provision of a commercial unit in principle subject to the protection of the amenities of the area and undermining of convenience shopping along Keepers Road.

### **Communal Amenity and Support Facilities:**

Overall the planning authority consider that the level of tenant amenity facilities is acceptable. The applicant has submitted a Property Management Strategy Report in support of the application. The report states 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.

### **Residential Standards:**

Having regard to SPPR1 of the Apartment Guidelines, there are no restrictions on unit mix. It is however noted that 60% of the units in the scheme are studio and 1 beds.

In terms of mix it is noted that the development provides 9 no. 2 bedroom 3 person units, 4 no. 1 bedroom units plus study and 4 no. 2 bedroom units plus study. The study rooms are generally 6.2sqm and in some instances range from 4.8 to 9.3sqm. There are concerns regarding the scale of some of the studies which could be classed as additional bedrooms. There are also concerns regarding the provision of 3 person units. The Apartment Guidelines states that 2 bedroom 3 person units are acceptable only in limited circumstances such as social housing or purpose built housing for older people.

### **Transportation:**

Third party concerns in relation to access and parking are noted. A detailed report from the Transportation Planning Division is attached (see Appendix B).

Transportation Planning Division has no objection to the development subject to conditions.

### **Flood Risk Assessment:**

Third party concerns in relation to flood risk are noted. The subject site is located in Flood Zone C. The Flood Risk Assessment submitted with the application concludes that based on the data available, the risk of flooding is considered low. It is noted that the Drainage Division has no objection to the development subject to conditions.

### **EIA Screening Report:**

Third party concerns regarding environmental issues are noted. ABP are the Competent Authority in this instance.

### **AA Screening Report:**

Appropriate Assessment Screening Report has been submitted for the proposed development which concludes that no elements of the project will result in any likely significant impact on any relevant European site, either on their own or in combination with other plans or projects, in light of their conservation objectives.

A bat assessment report accompanies the AA screening. The Bat Assessment Report concludes that no bat roosts or foraging were noted on site.

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

**Transportation Planning Division:** No objection subject to conditions relating to a) the extinguished vehicular access and removal of associated ditching and works to footpath, b) provision of physical interventions (planters/bollards) to restrict vehicular access along the public footpath, c) works to footpath at entrance, d) CMP/CMTP, e) implementation of measures identified in the RTP/MMP, f) carparking allocation to residential use and not to be sold/leased or otherwise disposed of to other parties, g) cost incurred to be at expense of developer and h) compliance with Code 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) flood mitigation measures contained in SSFRA, k) demolition and protection of public surface water sewers/infrastructure.

**Parks, Biodiversity and Landscape Services:** No objection subject to conditions relating to a) development contribution (€4000 per residential unit) in lieu of public open space, b) tree protection and requirement for arborist, c) tree bond and d) implementation of landscaping scheme.

**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 noise control and air control at construction and operational phase.

**Environment & Transportation Department – Waste Regulation & Enforcement Unit:** No objection subject to Waste Regulations requirements relating to a) updated authorised waste collection permit, b) destination facilities, c) details of competent person, d) details regarding 'quantities', e) waste dockets, f) clarification of crushing of stone 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.

#### **8.5 Chief Executive Report Conclusion**

Notwithstanding the inclusion of a masterplan in support of the application, as required by Variation 22 of the Dublin City Development Plan 2016-2022, it has not been demonstrated that the proposal has been considered as part of an overall strategy for the masterplan lands, in terms of site layout, height strategy, legibility, connectivity, permeability and mix of uses, is therefore not acceptable. In addition given the lack of stakeholder consultation during the preparation of the masterplan there are concerns regarding its validity.

On the basis of the information received it is considered that the proposed development provides a poor level of mix of uses, represents overdevelopment of the site, would have a serious negative impact on the residential and visual amenities of the area and the future development potential of adjoining sites and would provide a poor level of residential amenity in terms of the quality of communal open space. The planning authority therefore recommends that An Bord Pleanála refuse permission for the following reasons:

1. Having regard to Variation 22 of the Dublin City Development Plan 2016-2022, notwithstanding the inclusion of a masterplan, it has not been demonstrated that the proposal has been considered as part of an overall strategy for the masterplan lands, in terms of site layout, height strategy, legibility, connectivity, permeability and mix of uses, is therefore not in accordance with the Z10 Land Use Zoning objective for the site. The proposed development would therefore, by itself and by the precedent it would set for other development, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.
2. Having regard to the surrounding urban structure and the pattern of development in the area, to the form, bulk, scale and height of the proposal and the separation distances to the rear of adjoining properties and site boundaries, it is considered that the proposal does not provide an appropriate transition in scale or have due regard to the nature of the surrounding urban morphology. The proposal is considered overly dominant, would appear incongruous, would have an excessively overbearing effect on adjoining property, would unduly overlook third party private open space. Furthermore it is considered that the proposal would have a negative impact on the development potential of adjoining property. The proposed development would therefore seriously injure the amenities of property in the vicinity and the character of the area, would depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.



In the event that the Board grants permission a schedule of 22 conditions is recommended. These relate broadly to standard conditions. These include 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. And Section 48 development contribution.

## **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: Irish Water, Transport Infrastructure Ireland, National Transport Authority, Minister for Housing, Local Government and Heritage, An Taisce, The Heritage Council, Dublin City Childcare Committee.

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

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

In the case of this planning application, Transport Infrastructure Ireland has no observations to make.

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

Water made the following observations.

In respect of Wastewater: No surface water from the development shall enter the Irish Water network. The applicant shall liaise with the Local Authority Drainage Division to agree full details of the proposed surface water.

In respect of Water: New connection to the existing network is feasible without upgrade. A new 150mm ID pipe main to be laid to connect the development to the existing 6" CI main.

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

## **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 Standard for Future Occupiers.
- Potential Impact on Adjoining Properties/Lands.
- Traffic and Transportation
- Services & Drainage
- Ecology
- Part V
- Non-Residential Use
- Social Infrastructure
- Childcare
- 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 137 Build to Rent (BTR) apartments 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 use on the site are associated with the empty offices, warehouses/sheds which are proposed to be demolished.

A common thread across submissions received relate to the principle of the development on this site, in particular the proposal for Build to Rent apartments at this location and the suitability of this type of tenure for the area.

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

Under Variation 22 of the Dublin City Development Plan which was adopted on 10<sup>th</sup> March 2020, the land use zoning for the application site changed from Z6 to Z10 Inner Suburban and Inner-City Sustainable Mixed-Uses with an objective '*to protect, provide and improve residential amenities*'.

The varied Plan requires the primary uses on these zoned lands to cater for a relatively intensive form of development. Where significant numbers of employment and or residents are envisaged, a travel plan will be required based on the provisions of the Development Plan. 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.

Third parties and elected representatives in both submissions and in the Chief Executive report have raised concerns regarding compliance with the Z10-Inner Suburban and Inner-City Sustainable Mixed-Uses land use zoning objective and other requirements set out in Variation 22 which I shall also address.

The planning authority has also raised concerns regarding the level of mixed uses (1 no. retail unit proposed) and compliance with the ‘ethos’ of the Z10 land use zoning.

The non-residential element of the development is situated at ground level in Block F of the development and addresses the public realm along Herberton Road. 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 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. Based on development patterns, there may be greater scope for non-residential uses on other parts of the ‘Z10’ land parcel given the proximity of the northern portion of the Z10 lands (i.e the application site) to a primarily a residential street (Dolphin Road). Accordingly, 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.

Third-party observers refer to the requirement for the development to be considered against the policies within the Integrated Area Plan for Drimnagh (2008) and an updated plan that has been prepared and submitted by a local community group to Dublin City Council as part of their review of the Development Plan. The Planning Authority has only referred to the Dublin City Development Plan 2016-2022 as providing the local statutory plan for this area, and I am not aware of another statutory plan specifically for this part of the Drimnagh area at present.

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 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 Masterplan:**

I note that a constant theme raised by third parties and elected representatives in both submissions and in the Chief Executive report relates to the requirement under Variation No. 22 to provide a Masterplan for the lands which were the subject of this variation at this location. The planning authority have recommended refusal on the grounds that the submitted masterplan has not been agreed by the planning authority, stakeholders or prepared in consultation with the adjoining landowners and as such the planning authority has raised fundamental concerns regarding its validity. The planning authority has also raised serious concerns regarding proposed mix of uses, layout, height strategy, legibility, permeability, connectivity, open space, access and car parking as indicated in the masterplan submitted with the application.

I have reviewed Variation 22 and the intended purpose of the provision of a masterplan as provided for under the variation is to ensure that an integrated approach is taken to the delivery of a sustainable mix of uses on the overall lands thereby ensuring that adequate transportation, educational, health and recreational amenities are included in the development of the area.

The adopted variation outlines additional requirements regarding transportation, educational, health and recreational amenities as part of the consideration of proposals on the subject lands, which I address on this report where relevant. The Development Plan variation also requires a Masterplan demonstrating how a sustainable mix of uses would be achieved for the subject site alongside the adjoining Glenview Industrial Estate as part of the integrated planning and development of the area. Observers, Elected Representatives and the planning authority consider that a more comprehensive masterplan for the Z10 lands at this location should have been prepared in consultation with local stakeholders and submitted to the planning authority for approval prior an application being lodged in this site.

I acknowledge the issues raised by observers, Elected Representatives and the planning authority. I note that a Masterplan is submitted with the application. I have reviewed the requirements of Variation No.22 and I have concerns regarding the proposed Masterplan which I address in various sections of this report. I am satisfied that the applicant has complied with the requirement to prepare and submit a Masterplan for the Z10 lands at this location. There is no statutory requirement that the applicant was required to have the Masterplan submitted to and agreed with the planning authority prior to the lodging of an application for this site (or indeed any site within lands affected by Variation No. 22), the Masterplan submitted with the application includes the wider Herberton Road/Keeper Road (Glenview Industrial Estate) lands, all within the boundary of the Z10 zoning objective adopted under Variation No. 22 of the City Development Plan. It is indicative and clearly states that it has not been prepared in consultation with adjoining landowners or relevant stakeholders.

The planning authority recommended that permission be refused having regard to Variation 22 of the Dublin City Development Plan 2016-2022 stating that notwithstanding the inclusion of a masterplan, it had not been demonstrated that the proposal had been considered as part of an overall strategy for the masterplan lands, in terms of site layout, height strategy, legibility, connectivity, permeability and mix of uses, is therefore not in accordance with the Z10 Land Use Zoning objective for the site.

The applicant has argued that given that the lands are within various ownerships, the degree of certainty to which the applicant can deliver upon the intentions and aspirations of the Variation are outside of their control. I concur with the applicant that the submission of planning applications on sites within the Variation lands should not be precluded from redevelopment in the absence of certain landowners coming forward as part of a coordinated redevelopment structure.

Any masterplan for the Z10 lands would benefit from a collaborative approach involving all the relevant landowners. And while I may agree with the planning authority that a Masterplan for the wider Z10 lands which involves all relevant stakeholder would be beneficial I draw the Board's attention to the wording of Variation No. 22 which was adopted on the 10<sup>th</sup> March 2020 states that "...*Dublin City Council will require the preparation and submission of a masterplan demonstrating how a sustainable mix of uses will be achieved on the overall site as part of the integrated planning and development of the area*". It does not state/include a requirement that a Masterplan should be approved by the Council prior to an application on these lands. I address whether the Masterplan has addressed other criteria set out in Variation No. 22 required to achieve an integrated approach to the development of the area etc in the relevant sections of this report in due course.

A Material Contravention statement regarding the requirement for a Masterplan 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.

#### **10.1.4 Density**

The proposal is for 137 BTR apartments on a site with a stated area of c.0.7434 hectares, therefore a density of c.185 units per hectare is proposed.

Observer submissions and elected representatives have raised concerns in relation to the density and scale of the development given the size of the site, noting the level of development permitted and built in the area to date.

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 1.92 and site coverage is 36%. 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. The planning authority indicated that in terms of density, site coverage and plot ratio the development accords with the indicative ranges as outlined in the Dublin City Development Plan 2016-2022.

The Dublin MASP, as set out in the RSES, highlights the Luas Corridor as a strategic development corridor, where compact growth is supported. 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.

The applicant has argued that the site is within 500m of the rail hub. This is disputed by observers, elected representative and the planning authority. Based on the information available and having inspected the site and area I consider that the site is within 500m of the rail hub when considered in the context of measuring a straight line on a map from the site to the rail hub. However, in the context of current access/connectivity by foot from the application site to the rail hub, the site is more akin to a c.620m walk to the nearest Luas stop at Suir Road (Red Line), which connects directly with Dublin City, Tallaght town centre and to employment destinations such as St. James' Hospital, the National Children's Hospital (under construction), the Coombe hospital and Ballymount industrial estate.

The site is served by a number of high frequency bus services within the immediate surrounds of the site which include: Bus Routes 17, 17D, 27, 56A, 77A, 77N and 151 (Crumlin Road), Bus Routes 68 and 68A (South Circular Road), Bus Route 122 (Herberton Road) and Bus Route 123 (Gallymore Road). These existing services will be further enhanced and upgraded as part of the Bus Connects Core Bus Corridor Route Plans. The site is located c.300m from Crumlin Road which carries the Main D Spine Care Bus Route. The submitted Mobility Management Plan(MMP) has stated that the planned frequency of service for the D Spine is a bus every 4 minutes. An extract from the NTA Bus Spine Frequency Tables is included in the MMP. Immediately adjacent the site, Orbital Route S2 (Blue) and Radial Route 72 (Purple) are intended to serve Herberton Road, with the expected frequency of these services illustrating that the intention is for orbital buses every 15 minutes and radial buses every 30 mins which will in turn connect to Main Spine Routes.

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 of the Luas, 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 (185uph) is 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 County Development Plan.

#### **10.1.5 Built to Rent**

The proposed development includes 137 no. Build to Rent apartments. Section 5 of the Sustainable Urban Housing: Design Standards for New Apartments, 2020 provides guidance on Build-to-Rent (BRT). 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 137 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, I would highlight the application site is located within the area identified in the RSES as ‘Dublin City and Suburbs’, within the Dublin Metropolitan Area. Dublin City and Suburbs accounts for about half of the Region’s population or a quarter of the national population, as well as being the largest economic contributor in the state.

The site is highly accessible by Luas and by bus, 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 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. I note the applicant has submitted a Property Management Strategy Report and 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)

#### **10.1.6 Unit Mix**

A common thread throughout the observer submissions received relates to concerns with regard the proposed unit mix, in particular the extent of one-bed and studio units, which they consider could lead to a more transient population within the area; which would not facilitate in the creation of sustainable communities and would not be suitable for the accommodation of families. Many of the Elected Members have also raised concerns in this regard. The planning authority has not raised concern in this regard.

I note that studio and one-bed units comprise c.59.8% of the proposed residential mix with c.3.7% of the proposal being three-bed units. 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), these comprise c.59.8% 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. Furthermore, I 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 3.7%.

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 highlight to the Board that this non-compliance is with a standard of the operative City Development Plan, not a policy of this 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’s concerns regarding unit mix pertains to the number of 2 bed (3 person) units proposed and the size of the ‘study’ in some 1 and 2 bed units that could be classed as an additional bedroom.

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 marginally above the 42%-50% threshold.-The proposed development is a long-term, purpose-built managed scheme of over 50 units (137 residential units in total). 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, including the St. James' Hospital and the New National Paediatric Hospital which is under construction. 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 where larger properties predominate, 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 traditional houses.

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 6 blocks (A, B, C, D, E & F). The applicant has set out that in their documentation the height strategy for the proposed development and how it is distributed throughout the site. Block F (5 storeys) is located at the entrance to the subject site along Herberton Road. Existing trees to be retained to the north will provide screening for residences. Blocks A and B (with height of 2-3 storeys and 3 storeys). The applicant has outlined that they are positioned and designed to respect the houses and private amenity spaces to the north at Dolphin Road. Block C (part 4 part 5 storey) with the increase in height proposed to the south-east portion, further away from the existing residences at Dolphin Road providing a transition in height to the east. Block D, adjacent to Block C (8 no. storeys). Block D is connected to the part-5-storey Block E via a 2-storey portion of development. Block E connects back to Block F to the east by way of a 2-storey connection.

Third parties and elected representatives have raised concerns in relation to suitability of the height, scale and massing of the development relative to the two storey dwellings which back onto the site and to the impact on the development potential of the lands to the south. It is contended that the submitted height does not respect the existing built environment. Concern is also raised in relation to the impact of the proposed height on the Grand Canal located c.61m to the north, which is an ACA and that the development would detract from its amenity value. 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. These concerns are interlinked with concerns regarding 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 refusal having regard to the surrounding urban structure and the pattern of development in the area, to the form, bulk, scale and height of the proposal and the separation distances to the rear of adjoining properties and site boundaries, it is considered that the proposal does not provide an appropriate transition in scale or have due regard to the nature of the surrounding urban morphology.

The Planning Authority do not consider that the applicant has demonstrated that the proposal satisfies the development management criteria as outline in Section 3.0 of the Height Guidelines. The site is situated just south of the Grand Canal and sizable structures are proposed for the site of a much greater height, scale and mass than the surrounding urban structure which is predominantly residential in nature, made up of two storey terraced dwellings. I note the concerns raised by the planning authority and have inspected the site and surrounding area. The site is c.61m south of the Canal and is separated from it by trees, footpaths, cycle lanes and Dolphin Road (R111), therefore I do not consider that the site adjoins the Canal.

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 buildings in locations which are most sensitive, and to place the higher buildings in areas which 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 applicant has argued that the site is located within 500m of a 'rail hub' and therefore height of 24m applies. The planning authority dispute this, I note that the site is located within 500m of the Rialto Luas stop and 540m of the Suir Road Luas stop as the crow flies. When measured via pedestrian route along Herberton Road the distance is more akin to c.620m. In this regard the site is not considered to be within 500m of a 'rail hub'. The proposed height of 8 storeys (26.1m) over basement level exceeds the height set out in section 16.7 whether viewed in the context of within a 'rail hub' or not, the level of exceedance however varies. 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 Council Development Plan 2016-2022 in respect of building heights. I address this in section 10.13

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 analysis. Applying section 3.2 of the Building Height Guidelines I consider the following:

At the scale of relevant city/town, the proposal will make a positive contribution to place-making introducing new street frontage and utilises height to achieve the required densities. However, I do not consider there to be sufficient variety in scale and massing to respond to the scale of adjoining developments. I consider the proposed quantum of residential development, residential density and tenure type (build to rent) acceptable in the context of the location of the site in an area that is undergoing redevelopment, is an area in transition proximate centres of employment and public transport.

At the scale of district/neighbourhood/street, The proposed development would not interfere with significant views in the locality. The site is not located within an Architectural Conservation Area and there are no protected structures onsite or within the immediate vicinity. However, I do not consider that the proposal responds satisfactorily to its built environment in this instance and fails to make a positive contribution to the urban neighbourhood at this location. I am of the opinion that the proposal cannot be accommodated on this site without detriment to the visual amenities of the area given the existing built environment in the immediate vicinity. The use of material and finishes to the elevations does assist in breaking down the overall mass and scale of the proposed development. CGIs of the proposed development have been submitted with the application and have assisted in my assessment of the proposal. Overall, while I consider the height appropriate for this

location I have serious concerns relating the scale and massing of the proposed development which I address below. I acknowledge that development of the site would bring into use a zoned serviced site that is underutilised at present at this prime location, however I do not consider the current proposal is an appropriate solution for this site given its constraints.

At the scale of the site/building: The proposal includes new public realm, active frontages and fenestration that will passively survey the public road and pedestrian linkages to adjoining lands are indicated and would contribute to the legibility of the area. 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 10.6.

Having regard to the considerations above, I consider that the proposal in principle for 2 to 8 storey buildings 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. However, in terms of the cumulative impact of the proposed scale and massing I am of the view that the proposed development does not 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 10.13 of this report. Having regard to all of the above, I am not 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.

### **10.2.2 Scale & Massing:**

The planning authority second recommended reason for refusal states *‘Having regard to the surrounding urban structure and the pattern of development in the area, to the form, bulk, scale and height of the proposal and the separation distances to the rear of adjoining properties and site boundaries, it is considered that the proposal does not provide an appropriate transition in scale or have due regard to the nature of the surrounding urban morphology. The proposal is considered overly dominant, would appear incongruous, would have an excessively overbearing effect on adjoining property, would unduly overlook third party private open space. Furthermore it is considered that the proposal would have a negative impact on the development potential of adjoining property. The proposed development would therefore seriously injure the amenities of property in the vicinity and the character of the area, would depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area’*. I addressed height above. I address overbearance, overlooking and residential amenities in section 10.4. I address form/bulk/scale below.

A reoccurring theme raised in the observer submissions highlights concerns that the proposed development is overbearing and would have a significant 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 have their rear gardens bounding the site to the north and west with Thistle House located to the south and separated from the site by access to adjoining industrial units which form part of Glenview Industrial Estate. Block A (2-3 storeys) to No. 45 to 56 Dolphin Road, Block B (3 storeys) to No. 56-60, 65-72 and 75-80 Dolphin Road and Block C (5 storeys) to 80-86 Dolphin Road. Given the set back of Block F (4-5 storeys) to Thistle House to the south.

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. While I am generally satisfied that the application site can accommodate the proposed height, I concur with the planning authority with regard to the proposed scale and massing of the blocks. Arising from the proposed length of blocks (Blocks D, E and F are physically linked at lower levels and have a combined length of c. 95 metres coupled with the proximity Block A, B and C to the boundaries with the adjoining residential properties. This is further exacerbated, in my opinion, by the use of materials and finishes which I address in section 10.2.3. All of which combine to create an incongruous development that is overbearing and visually dominant due to its inappropriate scale and massing when viewed from the adjoining residential properties (see section 10.4.2).

In terms of visual amenity for surrounding residents, it is my opinion that the blocks with the greatest potential to have visual impacts on residential properties are Blocks D, E & F, I consider that it would be excessively visually dominant on the skyline at this location, given their scale and massing; would be overbearing when viewed from neighbouring lands and while attempts at transitioning of heights have been made, they do not go far enough to form an appropriate form of development at this location. I consider that the proposal is not in compliance with Criteria 1 'Context' of the Urban Design Manual. I also consider that having regard to the Urban Development and Building Height Guidelines, 2018, at the scale of the site/building, the form, massing and scale of the proposed development is not carefully modulated in this instance. In relation to the cumulative impact of the interconnected Blocks D, E & F, I am of the opinion that, given its extent at c.95m (notwithstanding the connections are at 2<sup>nd</sup> floor level), it would appear unduly dominant, overbearing and monotonous when viewed adjacent properties, in particular those bounding the site to the north and would significantly detract from the visual amenities of the area. Having regard to the Urban Development and Building Heights Guidelines, 2018, I consider that at the scale of district/neighbourhood/street, the proposal does not respond satisfactorily to its overall natural and built environment and in this instance, given its dominance and overbearing impact does not make a positive contribution to the urban neighbourhood at this location. Overall, I consider the cumulative impacts of the blocks are monolithic comprising excessive mass of building. My concerns in this regard are such that I recommend a refusal of permission in this instance

While I consider that the applicants have had regard to improving the public realm, streetscape and connectivity of the area I do not consider that appropriate transitions in scale and massing, coupled with the proximity to the site boundaries, have been put forward in the design notwithstanding that the blocks are stepped in an attempt 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 will be not be a positive change. I do not 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

As set out above I have no issue with the proposed height and the provision of the highest element (8 storeys) located central into the development addressing lands to the south which were also to the subject of Variation 22. Thus providing a focal point for the development with a transition in height as one moves through the site towards its perimeters and adjoining residential properties. My main concerns relate to the overall scale and massing of the proposed development, the siting of the blocks and the context of the application site. I consider that the proposal before me is excessive in terms of its scale and massing and does not constitute an appropriate form of development at this location

Concerns were raised that the proposed development would have a negative impact on the Grand Canal ACA and detract from its visual amenity. The CE Report noted that the site is situated just south of the Grand Canal and sizable structures are proposed for the site of a much greater height, scale and mass than the surrounding urban structure which is predominantly residential in nature, made up of two storey terraced dwellings.

The application is accompanied by a Townscape & Visual Assessment Report which identified a study area of 400m from the boundary of the proposed development. The study acknowledge that the development may be visible from beyond the study area. The assessment concluded that the development will likely be visible from the Grand Canal and surrounding road network. It will be most notable from adjoining properties and networks of streets. Impacts when operational will be perceived from c. 250 radius.

I have reviewed the images presented in the report and in the submitted CGIs 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 Grand Canal ACA.

Having regard to the foregoing and while I do not have issue with the overall height of the proposal per se, I do have reservations that the proposal before me represents overdevelopment of the site and requires amendment to constitute an appropriate form of development. I am of the opinion that the development's lack of appropriate transitions in scale to the domestic scale dwellings further exacerbates its visual dominance. It is my opinion that the proposal does not comply with Criteria No. 1 of the Urban Design Manual 'Context'. I do not consider that the development positively contributes to the character and identity of the neighbourhood. The proposal before the Board is excessive in terms of scale and massing and does not offer an appropriate transition with the existing building environment and should be refused permission on these grounds in my opinion.

### **10.2.3 Design, Materials and Finishes**

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.

The proposed development seeks permission to demolish the existing buildings on site and to construct development primarily comprising 6 apartment blocks of 2 to 8 (over basement) storeys in height, following an east west axis, with blocks (A, B and C) situated along the northern boundary and block C and D situated within the southern portion of the site with Block F framing the entrance and addressing Herberton Road. Vehicular access is off Herberton Road with access to the basement car park under Block A. Works to public realm are proposed along the Herberton Road frontage.

The applicant is proposing a contemporary intervention in an area predominantly characterised by commercial/industrial developments and traditional two storey houses. 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.

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 submitted with the application sets out that the proposed material and finishes includes the use of a series of latent underlying organisational module based on clay brick dimensions which can be manipulated through subdivision or aggregation. Variety is provided by providing combinations in response to the various conditions – apartment type, room type, room size, corresponding window type/ size, terraces, corners, communal facilities, etc – avoiding visual stasis or monotony. The overall elevation organisation consists of a trabeated organisation of elemental clay brickwork panels spanning between horizontal pre-cast concrete band beams, with large scale window openings between brick panels. Each window opening is articulated and elaborated by a pre-cast concrete down stand to the head of the window, and a chamfered panel on one jamb of each window. Discrete variation to the surrounding elevational ‘grain’ occurs at areas of communal programme. Larger scale groupings of façade components at the ground floor frontage onto the ‘Street’ respond to their particular condition and visually relate these to the scale and corresponding façade of the retail unit to Herberton Road. It is also submitted that by applying controlled number of window ‘types’ to a variety of different interior spatial conditions across any façade, maintains a consistent register of openings throughout the scheme which articulate and relate to their position and orientation within the overall.

I have reviewed the information on file, I consider given the scale and massing of the overall development, the cumulative length of interconnected block (C/D/F) and the context of the site that the proposed materials and finishes do not assist in assimilating the proposed development into its surrounds. I am of the view that the overall massing and scale could have been broken down through an appropriate design solution and the use of material and finishes to further soften the visual impact of the proposal which will be visible from all approaches to the site, from Dolphin Road and from the northern side of the Royal Canal. I do not consider the Design Strategy and materials proposed assist in promoting the scale of development at this location. This is further exacerbated by the lack of collaboration and consultation with adjoining landowners in the preparation of the masterplan for the wider Variation 22 lands submitted with the application.

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.

I note the existing brownfield use, industrial and commercial nature of the adjoining lands to the south and the need for efficient land use I consider the height range acceptable for this inner city setting and in principle I consider the proposed variation in height compliments the site. My concerns relate to the scale and massing which I do not consider appropriate at this location and I am of the view that the development has not been designed to be respectful of the character of the area and while I have no objection to a modern intervention at this location, the current proposal before the Board is not respectful of its surroundings or an appropriate design intervention at this location, in my opinion.

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

The Chief Executive report raised concerns regarding the position of the blocks on the subject site and the resulting impact on legibility, connectivity and permeability to the main bulk of the masterplan lands to the south. Further to comments made by DCC at pre-planning stages the applicant has included a second future link to the lands to the south. However, concerns remain regarding legibility, permeability and connectivity. The proposed links are located between Blocks C and D in the south-west corner of the site, with a second link proposed to the rear of Block F from a perimeter amenity area which has no direct connection to the access street.

The Chief Executive report also raised concerns that it has not been demonstrated that the site layout has been considered as part of an overall strategy for the masterplan lands and the site layout is therefore not acceptable. Further consideration of masterplan and site layout is required to ensure the coordinated and integrated planning and development of the area.

Having reviewed the proposals and submissions, I consider that in order to provide for a more appropriate and cohesive future interface with the adjoining masterplan lands, the pedestrian routes should extend to the boundary with the Glenview Industrial Estate to the south providing for the future potential routes indicated in the applicant's masterplan. I acknowledge that the Masterplan submitted is indicative and does not have the benefit of the involvement of all landowners of the Z10 lands (variation 22). The development of the application site cannot be to the detriment of lands to the south which I address in more detail in section 10.4

The development is laid out in a series of 6 block located along an east west axis with the proposed retail unit (c.199.7sq.m) is located on the ground floor level of Block F and provides an active streetscape presence along Herberton Road. I consider this acceptable.

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 to the Grand Canal and public open space within Brickfield 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 81.8% 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. I acknowledge that there are 3 north facing single aspect apartments which front onto the internal access road/area. Given the location of the site in an inner city location and with blocks orientated to maximise easterly and westerly aspects, where the proposed developemnt exceeds the 33% requirement acknowledged by the planning authority as suitable in this instance, I consider the level of dual aspect provided acceptable.

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 units (c.37sq.m) fall below 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 address this in the Material Contravention Statement submitted. While a number of the proposed apartments (8 no. studio) 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.



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. As noted previously the development is comprised of 6 no. Blocks. Blocks A, B, C are entirely residential, Block D, E & F are residential with some communal amenities/shared facilities. Block F has a commercial use (c.199.7 sq.m retail unit) at ground floor level.

The internal communal amenities/shared facilities (c.657.3 sqm) are provided within Blocks D, E and F. This equates to a stated 4.8 sqm per unit and 1.76sqm per occupant. These include a reception hub, parcel room, multi-purpose / screening area, laundry room, meeting rooms, bookable function rooms, work/study room, coffee facilities, games room, a gym / fitness room. I consider the level of amenities/facilities and their distribution throughout the blocks acceptable.

A Property Management Strategy Report is submitted with the application. This report states 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. I consider this acceptable.

Private amenity spaces are provided in the form of balconies and terraces. Given the limited setback from the site boundaries I have concerns regarding the level of residential amenity these units will offer given their limited outlook which result in a poor environment for future residents for the occupiers of units on the ground and first floors in particular.

A communal roof terrace at second floor level is located in Blocks D and E (totalling 657.3 sq.m). Hard and soft landscaped external communal amenity spaces are proposed at ground level, including perimeter amenity spaces with integrated play facilities, seating areas, perimeter walk known as 'Amenity Areas' A-E and a central courtyard space. The applicant has set out that c.2365 sq.m of communal open space would be provided in total within the development which represents c.29% of the overall site. The hierarchy and function of the various outdoor communal amenity spaces to serve the development have been set out in the documentation and include: Amenity space Block A (c.335sq.m), Amenity Space Block B (c.315sq.m), Amenity space Block C (c.400sq.m), Amenity space Block D (c.260sq.m), Amenity space Block E (c.390sq.m) and a Central Communal Amenity Space (c.665sq.m). A total of 243 sq.m of children's play areas are set in 5 no. places, integrated into the proposed landscaped communal amenity area as follows: Amenity space A (c.54sq.m), B (c.39sq.m), C (c.25sq.m), D (0sq.m), E (c.69sq.m) and in the Central Communal Amenity Space (c.56sq.m).

The planning authority have raised concerns that apart from the central courtyard which has an overall area of 665sqm, much of the communal open space is left over space on narrow tracts of land between the Blocks of apartments and the perimeter boundary walls. Raising concerns regarding the quality of the communal open space proposed. I have examined the proposal submitted and I note that communal open spaces are distributed throughout the site and provided for each Block as set out above. I do not consider these to be unsuitable and smaller parcels of communal space distributed across the site is acceptable subject to acceptable daylight/sunlight etc being achieved. The Landscape report sets out the proposed hierarchy with amenity areas of varying function distributed throughout the development and overlooked by residential buildings. Third parties have raised concerns that the access road cuts through the proposed central amenity space. This is not the case, the access road in the form of a shared surface follows the line of a former right of way though the site with the Central Communal amenity space provided on the north western portion of the site bounded by Block A, B and C.

I am satisfied that there is a clear definition between communal and private spaces is provided by the incorporation of landscaping to define the various spaces. Access to the basement car park is via Block A, therefore the potential conflict with pedestrian using the amenity spaces as raised by observers is limited. I note that cyclist will access allocated cycle parking in the basement via Block A through a dedicated bicycle lift and Block E. Given the location of Block A there is limited potential for conflict between cars/cyclist and pedestrians. In order to access parking at Block E I note that cyclist will use the shared access lane/surface to access the allocated parking and there is potential conflict between cyclists and pedestrians but this can be managed in an appropriate manner. I address the issue of daylight/sunlight for amenity spaces in section 10.3.3 of this report.

### **10.3.2 Overlooking**

The planning authority raised issue with the separation distance between Block B and C (c.5m) and Block C and D (c. 4.8m) where there are opposing balconies.

I am of the view that for the most part the proposed layout provides for adequate separation distance between opposing balconies and habitable rooms within the scheme. However I do recognise that there are pinch points where separation distances are not optimal as highlighted above. 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 Assessment Report (dated December 2021) submitted with the application considers inter alia potential daylight provision within the proposed scheme and overshadowing within the scheme.–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 results on page 92 of the applicant's assessment do not distinguish between uses, it refers to 'habitable rooms'. The study assessed all 344 habitable spaces/rooms across the 6 blocks. The study concluded that 93% (ie 319) of the rooms studied achieve the minimum ADF of  $\geq 1.00\%$  and 92% (ie 317) rooms achieved an ADF of  $\geq 2.00\%$ . It is stated that the majority of rooms that do not meet the targets relate to bedrooms in units where the LKD received 2% ADF or higher.

The applicant has stated that one studio in Block D and one LKD (room) in Block F do not reach the 2% and 1.5% ADF respectively. The applicant has submitted that these units have the benefit of a well sunlit roof terrace as compensation.

I have reviewed the applicant's assessment and have summarised the findings as follows:

Room Type	Block A	Block B	Block C	Block D	Block E	Block F
<b>LKD</b>	12 assessed. All achieve over 2% ADF	16 assessed. All achieve over 2% ADF	24 assessed. 1 is less than 2% but over 1.5% ADF (value of 1.82%)	48 assessed. 1 is less than 2% but over 1.5% ADF (value of 1.54%)	18 assessed. All achieve over 2% ADF	16 assessed. 1 is less than 1.5% ADF (value of 0.92%)
<b>Bedroom</b>	19 assessed. 7 achieve less than 1% ADF (values range from 0.70 to 0.97%)	24 assessed. 9 achieve less than 1% ADF (values range from 0.66 to 0.99%)	38 assessed. 7 achieve less than 1% ADF (values range from 0.83 to 0.97%)	61 assessed. All achieve over 1% ADF	29 assessed. All achieve over 1% ADF	18 assessed. All achieve over 1% ADF
<b>Study</b>	N/A	N/A	4 assessed. All achieve over 2% ADF	2 assessed. All achieve over 2% ADF	2 assessed. All achieve over 2% ADF	N/A
<b>Studio Apt</b>	3 assessed. All achieve over 2% ADF	1 assessed. Achieves over 2% ADF	1 assessed. Achieves over 2% ADF	2 assessed. Both achieve under 2% but over 1.5% ADF (value of 1.76 each)	1 assessed. Achieves over 2% ADF	N/A

Of the 134 LKD assessed 131 achieved an ADF of 2% or more. 3 have values below 2%, of which 2 achieve values over 1.5% with one having a value of 0.92%. This equates to 97.7% achieving a minimum of 2% ADF.

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 daylight living room’. In this instance the kitchens are daylight, they are not intended as a dining area and the kitchen is directly linked to a well daylight 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 over 97% of the KLD achieve  $\geq 2\%$  ADF and the remainder achieve  $\geq 1.5\%$  ADF, bar one which has a value of 0.92%. 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.

Of the 189 bedrooms assessed 166 achieved values of 1% or above. This equates to 87.8% achieving a minimum of 1% ADF which I consider acceptable given the use of these rooms and the provision of housing on serviced lands in an area undergoing significant regeneration,

Of the 8 studios assessed 6 achieved values of 2% or more, 2 achieved less than 2% but over 1.5% ADF with values of 1.76%. This equates to 71.4 % achieving a minimum of 2% ADF. I note that the studios that do not achieve 2% ADF have compensatory measures in the form of well-lit terrace/balcony as compensation. I consider acceptable given the constrained nature of the site and the gain in bringing forward 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 foregoing and that the analysis considered 344 points which relates to all habitable rooms across the proposed development these included bedrooms, study, and living/kitchens for units and studio units across the blocks. 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 8 no. spaces had been assessed, of which 4 no. meet the criteria as set out in the BRE Guidelines. The average value shows that 55.3% of the overall proposed amenity space would receive more than 2 hours of sunlight on March 21st. The applicant has argued that external amenity area provided is significantly in excess of the minimum value and if the number of the amenity spaces were to be reduced, all spaces might meet their target value. However, the applicant submits that a reduction of the communal open space in favour of all spaces meeting the Guidelines could be considered more detrimental to the potential occupants than including shaded additional amenity space.

The planning authority raised concerns that 44% the main central communal open space area receives 2 hrs of sunlight on the 21st March and considered that given that this is the primary area of open space within the scheme, is not considered acceptable that it does not meet the required minimum standard in relation to sunlight.

I have considered the assessment submitted and note that 4 of the 8 spaces meet the requirements. The 4 spaces that do not comply with the BER guidelines are: The Central Amenity Space (44.3%), Block A amenity space (40.8%), Block B amenity space (47%), Block D amenity space (43.7%). I have serious concerns regarding the amenity value of these areas, in effect half of the proposed communal amenity spaces do not comply with the BRE sunlight requirements and offer a reduced level of amenity for future occupiers.

I acknowledge that Block E/F benefit from access to roof terrace (93.7% sunlight). I also note that when reviewed cumulatively 55.3% 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. Notwithstanding, 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. Furthermore, I concur with the planning authority, the Central amenity space, which is the main space serving the development falls considerably below BRE guidance with only 44.3% achieving 2 hours sunlight on the 21<sup>st</sup> March.

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. While I note that residents have access to all of the amenity areas, I do not consider the shortfall for 4 areas (which includes the central amenity space) acceptable given the level of amenities available to the residents within the proposed scheme.

Having regard to the foregoing I do not consider that adequate allowance has been made in the proposed design for access to sunlight through adequate separation between the blocks and their configuration on site relevant to the scale of the development. I am not 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. For the purposes of performing an elaborate wind microclimate study 18 different wind scenarios and directions were considered (see Table 1.1 of the 'Wind and Microclimate Modelling' report submitted with the application) in order to take account of all the relevant wind directions in Dublin. The report focused on the 8 worst case and most relevant wind speeds with cardinal directions, which are the speeds and directions showing the most critical wind speeds relevant to the development (see Figure 1.2 of the 'Wind and Microclimate Modelling' report submitted with the application).

The study concluded that wind flow speeds at ground floor are shown to be within tenable conditions. Some higher velocity indicating minor funnelling effects are found near the south side of the development and some areas between blocks. The proposed development does not impact or give rise to negative or critical wind speed profiles at the nearby adjacent roads or nearby buildings. It also concluded in terms of distress, no critical conditions were found for 'frail persons or cyclists' and for members of the 'general public'. It also concluded that the proposed development does not impact or give rise to negative or critical wind speed profiles at the nearby adjacent roads or nearby buildings.



The planning authority noted the lack of assessment regarding balconies but was satisfied that mitigation measures could be addressed by condition. I have examined the information submitted and I consider the findings robust and acceptable. 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.

## **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 residential amenity. 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 Chief Executive report has raised serious concerns regarding the separation distances achieved between the blocks and to the boundaries of the site and considered that the proposal would have a negative impact on adjoining residential amenity and would compromise the development potential of the adjoining lands to the south. The planning authority's recommended second reason for refusal sets out that *"The proposal is considered overly dominant, would appear incongruous, would have an excessively overbearing effect on adjoining property, would unduly overlook third party private open space. Furthermore it is considered that the proposal would have a negative impact on the development potential of adjoining property. The proposed development would therefore seriously injure the amenities of property in the vicinity and the character of the area, would depreciate the value of property in the vicinity."*

The application site is located within the inner-city and its former use as warehouses and offices adjoining Glenview Industrial Estate in an area characterised by low-rise development 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, in particular the neighbouring residential properties located to the north and west of the site. The development site is bounded to the north by the rear gardens of No.45 to 60 and No. 65-72 Dolphin Road. To the west by the rear gardens of No. 77 to 86 Dolphin Road. To the south Glenview Industrial Estate (Variation 22 lands). Herberton Road forms eastern boundary with two storey houses on the opposite side of the street.

I am satisfied that the proposed development will not have a detrimental impact on properties (two storey houses) on the eastern side of Herberton Road in terms of overlooking. To the south the site is bounded by Glenview Industrial Estates and lands which were also the subject of Variation 22 of the current City Development Plan and the requirement for the preparation of a Masterplan.

To the south of the access to Glenview Industrial Estates is Thistle House and south of this a car sales showroom. The closest sensitive receptors are the residential properties located to the north and west of the site along Dolphin Road, where the bulk of the observers reside.

#### **10.4.2 Overbearance**

A common theme throughout the submissions which are predominantly from local residents, is that the proposed development would be overbearing and have a detrimental impact on the visual amenities of local residents.

The planning authority also raised serious concerns regarding the overbearing impact of the proposed development on adjoining residential amenity in particular arising from the setbacks of Block A and B.

Block A (2-3 storeys over basement) is set back between 3.74m (single storey projection) and 6.70m from the northern boundary. Block B (3 storey) has setbacks from the site boundary ranging between 3.42m to 9.44m. Block C (5 storey) has setbacks from the boundaries with adjoining residential properties range from 7.8 to 13.66m and is set back between 2.95 and 4.89m from the southern boundary. Block D (8 storeys over basement) is setback between 2.98 and 9.75m from the southern boundary, Block E (5 storeys over basement) is between 4.01 and 6.69m and Block F (4-5 storeys) has setbacks ranging from 3m to 14.2m from the southern boundary.

The applicant's height strategy sets out that there is a concentration of taller elements towards the middle of the site and gradual transitions in height towards other buildings within proximity of the site were implemented to achieve this. 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 of the area. And I acknowledge that any development (regardless of scale and height) will have an visual impact on adjoining lands I also note that Block A and B are stepped in height in an attempt to address the transition with the houses along Dolphin Road. My concerns relating to the visual dominance of the proposed development which I consider incongruous due to its scale and height. It is the cumulative impact of the 6 blocks rather than individual blocks which form my opinion. I am of the view, given the orientation of these houses and the relationship with the application site and the scale and massing proposed that the proposed development would result in an overbearing and visually dominate development when viewed from houses bounding the application site along Dolphin Road in particular, which is further exacerbated by the design, materials/finishes proposed and the limited setback from the site boundaries, The proposed development, given the low rise nature of the receiving environment results in an overbearing, incongruous development when viewed from all approaches to the site.

I am satisfied that the height of Block F and its set back from Thistle House, located south of the access road to Glenview Industrial Estates does not result in an overbearing impact when viewed from this property which is currently bounded by high walls along its northern elevation. Furthermore the existing building (office block) to be demolished has a height of c11.8m with c. 28.4 mast/pylon behind it. The proposed height of Block F at this point is c.10.2m when addressing Herberton Road stepping up to c.17.4m as one moves westwards towards Block E. As stated above, it is the cumulative impact of the scale and massing of the Blocks, in particular D.E & F on the adjoining properties which I do not consider acceptable.

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. In the current context there is no doubt that the proposed development would be visible from the private gardens and internal areas of the immediately adjacent and adjoining houses to the north, west and south along with the outlook of houses in the wider vicinity, in particular along Herberton Road, and would change the outlook from these properties. I have inspected the site and its surrounds and having regard to the proposed design, scale and massing which I address in section 10.2.2 and 10.2.3. I have serious concerns in this regard and I concur with the planning authority that the level of overbearance is not acceptable given the context of the site as set out previously in my report permission should be refused accordingly.

#### **10.4.3 Overlooking**

A constant concern raised by observers residing in houses adjoining the application site is that proposed apartments will result in overlooking of gardens and private amenity spaces.

Residential dwellings bounding the application site to the north and west (Dolphin Road) are traditional two storey houses, some of which have rear extensions. Thistle House, a two storey detached house, is located to the south of the site, separated from it by the access road to Glenview Industrial Estate. I have set out the set back from the proposed development to the nearest boundaries (rear gardens) in section 10.4.2 above. Below I have included set back to the closest first floor opposing windows/rear elevations.

The proposed blocks have been located on the site set back from the adjoining sensitive receptors. The eastern gable of Block A does not address opposing windows. Its northern façade is set back between c.32.8 and 42.8m from the rear facades of No. 55-59 Dolphin Road. The north eastern façade of Block B is set back between c.29.2 and 30.3m from the rear elevation of No. 58-61 Dolphin Road. Its northern façade is set back between c.35.1 and 37.6m from the rear elevation of No. 67-71 Dolphin Road. The western façade of Block C is set back between c. 22.1 and 24.5m from the rear elevations of No. 81-86 Dolphin Road with its southern façade addressing Glenview Industrial Estate. Block D addresses Glenview Industrial Estate. Block E addresses Industrial units and Block F addresses Glenview Industrial Estate to the south and Herberton Road to the east. Recessed balconies are provided

The planning authority raised concerns in relation to the setback of Blocks C, D and E (min.2.9m) from the southern boundary, the presence of balconies/terraces & roof terrace would negatively impact on the future development potential of the adjoining site.

In my opinion, the blocks are sufficiently set back from the rear boundaries of adjoining properties that I do not consider overlooking of the internal spaces (rooms) of adjoining properties arises. However with regard to overlooking of private amenity spaces/rear gardens (please refer to section 10.4.2 above for setbacks) and while I acknowledge that a degree of overlooking is to be expected in urban areas I do not consider that that the proposed development before the Board is one such scenario. I note the set back of Block A-B and C from the northern and western boundaries respectively. I have serious concerns regarding the overlooking of the main private amenity spaces (rear gardens) of the house which bound the site. I have set out the setbacks above and while I acknowledge that Block A is part two part single storey when addressing the northern boundary. I have serious concerns regarding the potential impact on adjoining properties to the north and west given the proximity of the blocks, in particular Block B and C, to the shared boundaries and overlooking if their private amenity areas (gardens).

The applicants have stated that in their design have considered the potential impact on the lands to the south and have sought to mitigate potential impacts through design so as not to prejudice potential development of these lands. An indicative Masterplan is included with the application that gives a hypothetical vision for the wider Z10 lands here. This Masterplan has no statutory standing and has not been prepared in conjunction with adjoining landowners (which would have been beneficial to the process) and therefore it is academic.

The planning authority raised concerns that the proposed development, in particular arising from overlooking from balconies on the southern elevation of Blocks D-E & F would have a negative impact on the development potential of adjoining lands due to the limited setback from the boundaries.

Block D (8 storeys over basement) is setback between 2.98 and 9.75m from the southern boundary, Block E (5 storeys over basement) is between 4.01 and 6.69m and Block F (4-5 storeys) has setbacks ranging from 3m to 14.2m from the southern boundary.

I acknowledge that the balconies are recessed and additional screening measures can be used to address overlooking in constrained urban sites. However, in this instance given the proximity of the blocks to the southern boundary I have serious concerns regarding the potential impact on lands to the south and vice versa any future development of the lands to the south would need to be cognisant of the residential amenities of occupiers of Blocks D-E & F or any residential development on this site. Given the restrictive nature of the site and the scale the development proposed there is no scope to increase setbacks from the southern boundaries by moving the blocks northwards. The current proposal before the Board would have a detrimental impact on the development potential of adjoining lands to the south given the proximity of the blocks to the site boundaries. It is my view that the potential impact on the development potential of adjoining lands to the south is best resolved/addressed by the preparation of a comprehensive collaborative masterplan for the Variation 22 lands which involves all relevant landowners. As was envisaged under Variation 22 which was adopted in 2020.

Glenview Industrial Estate effectively wraps around Thistle House and separates The application site from Thistle House. Any potential development of Glenview Industrial Estate will need to be considered in the context of potential impacts on Thistle House. I am satisfied that the application site is sufficiently removed from this sensitive receptor that I do not foresee undue impacts arising with regard to overlooking from Block E and F in particular.

#### **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.

The submitted Daylight & Sunlight Assessment Report examines the development with regard to BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) and BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. This is in accordance with the most relevant S.28 Ministerial Guidelines including Section 6.6 of the Sustainable Urban Housing Design Standards for New Apartments 2020, and Section 3.2 of the Urban Development and Building Heights Guidelines for Planning Authorities (2018). I am satisfied that there is adequate information in the submitted , Daylight & Sunlight Assessment Report to assess the impact of the proposed development.

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.

A common thread raised by observers relates to the impact of the proposed development on the residential amenities of adjoining properties.

The planning authority raised no concerns in relating to access to sunlight/daylight from any of the residential properties within the immediately vicinity of the application site. The planning authority concerns related to overshadowing of private amenity space of houses along Dolphin Road and recommended that permission be refused on these grounds.

#### **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 warehouse buildings of different scales and sizes and office blocks ranging in height up to 3 storeys front Herberton Road, there is also extensive surface parking. The rear gardens of No 45-60 and 65-72 Dolphin Road form the northern boundary and the rear gardens of No. 77-86 Dolphin Road bound the site to the west. It shares a boundary with the remainder of the Variation 22 lands to the south (Glenview Industrial Estate). Thistle House is located to the south of the existing access road to the Glenview Industrial Estate which separates the site from the northern boundary of Thistle House. Two storey dwellings face the site in the opposite (eastern) side of Herberton Road (No. 62-74 Herberton Road). The applicant's assessment has assessed potential impacts VSC values for a) 45-74 Dolphin Road, b) 75-86 Dolphin Road, c) 62-74 Herberton Road and d) Thistle House.

#### 45-74 Dolphin Road

15 submissions have been received from owners/occupiers of these properties. 107 points were assessed for No. 45-74 Dolphin Road. These are located to the north of the application site, a number of which have been extended over the years.

Of the 107 point assessment 35 have VSC values less than 27% but within 0.8 times its baseline value. Below is a summary of these points:

Window No.	Baseline VSC	Proposed VSC	Ratio of proposed to baseline
45a	29.66	24.10	0.81
45b	32.87	26.83	0.80
45c	31.85	25.71	0.81
46a	31.97	25.98	0.81
46b	31.85	25.70	0.81
47a	30.56	25.37	0.83
47b	31.00	25.53	0.82
48a	30.95	25.37	0.85
48b	31.11	26.33	0.85
49a	28.16	24.28	0.86
49b	27.98	25.31	0.90
50b	16.73	15.54	0.93
51b	25.49	22.21	0.87
52b	18.68	16.45	0.88
54b	20.49	18.19	0.89
55a	25.55	22.66	0.89
58a	13.95	12.96	0.93
59a	26.07	23.01	0.88
61a	27.61	25.20	0.91
63a	20.85	19.05	0.91
63b	26.72	24.58	0.92
65b	22.84	21.30	0.93
66a	25.48	23.30	0.91
67a	25.09	23.10	0.92
67b	25.17	22.96	0.91
68a	27.20	24.89	0.92
69a	21.87	20.63	0.94
70a	26.35	24.66	0.94
72b	26.50	25.17	0.95
73a	25.82	24.13	0.93
73b	26.25	25.08	0.96

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 an 'imperceptible impact' (terminology used in the applicants assessment) to the VSC of surrounding buildings is to be expected for any substantial development in such an area due to these buildings' relative heights, proximity to the site and the nature of the structures on site at present. I am of the view that in this instance 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.

75-86 Dolphin Road

10 submissions have been received from owners/occupiers of these properties

43 points were assessed for No. 75-86 Dolphin Road. These are located to the north and west of the application site, a number of which have been extended over the years. Of the 43 points assessed, 9 have VSC values less than 27% but within 0.8 times its baseline value. 5 points (80b, 81a, 82a, 83a and 83b) do not comply with BER Guidelines. Below is a summary of these points:

Window No.	Baseline VSC	Proposed VSC	Ratio of proposed to baseline
76a	19.84	18.56	0.94
77b	20.75	19.93	0.96
79a	31.16	25.28	0.81
80a	19.08	16.42	0.86
<b>80b</b>	30.27	23.34	0.77
<b>81a</b>	30.58	23.50	0.77
81b	22.49	19.17	0.85
<b>82a</b>	30.40	19.44	0.64
82b	21.83	19.92	0.82
<b>83a</b>	35.56	27.02	0.76
<b>83b</b>	35.59	26.93	0.76
84a	19.83	16.74	0.84
85a	25.46	20.74	0.81
85b	24.55	21.51	0.88

As highlighted above four of the five points are marginally below the BRE Guidelines with one falling short, given the context of the site I consider this acceptable.

Given the context of the site an 'imperceptible impact' (applicant's assessment) to the VSC of surrounding buildings is to be expected for any substantial development in such an area due to these buildings' relative heights, proximity to the site and the nature of the structures on site at present. I am of the view that in this instance 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.

#### 62-74 Herberton Road (opposite side of Herberton Road facing the site)

5 submissions have been received from owners/occupiers of these properties

23 points were assessed for No. 62-74 Herberton Road. These are located to the on the eastern side of Herberton Road opposite the application site. All 23 points assessed have values exceeding 27%, therefore comply with BER guidance.

#### Thistle House:

The assessment identified and assessed for potential impacts on 3 windows on the western (rear) elevation of Thistle House located to the south of the site where one of the observers resides.

Window No.	Baseline VSC	Proposed VSC	Ratio of proposed to baseline
Ta	26.46	25.96	0.97
Tb	25.30	24.53	0.97
Tc	35.59	30.80	0.95

Where values are less than 27% they are within 0.8 times the baseline figure, therefore meet the BRE guidelines. I consider this acceptable given the context of Thistle House, a single house located on the western side of Herberton Road with low rise commercial/industrial bounding it on all sides.

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 176 (applicant's assessment refers to 178) windows assessed and summarised above, I note that 5 (c.2.84%) (applicant's assessment refers to 4) (2.3%)) would have what the applicant has labelled 'minor' or 'moderate' impacts. In other words no impact was noted on 97.2.% (applicant's assessment refers to 97.7%) of windows serving adjoining or adjacent existing properties included in the assessment. The 5 windows affected relate to windows in No. 80, 81, 82, 83 Dolphin Road directly bounding the site to the west. 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, these 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.

#### Daylight Conclusion:

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 largely vacant 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 north, west and south. 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. As set out previously in my report I have concerns regarding the siting of the blocks and their scale and massing in terms of visual dominance/overbearance. However, with regard to access to daylight 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.

#### Adjoining lands to the south:

As noted above the site is bounded to the south by Glenview Industrial Estate which forms part of the Z10 lands at this location. The proposed development is located to the north of this adjoining site therefore will have limited impacts any potential development located to the south.

#### **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 Diagrams for 21<sup>st</sup> March are also include in the assessment.

The applicant's assessment has assessed potential impacts on a) 45-86 Dolphin Road, b) 62-74 Herberton Road and c) Thistle House.

#### 45-86 Dolphin Road:

To the north and west the private amenity spaces of the houses along Dolphin Road were assessed for the availability of sunlight on the ground. The Assessment submitted found that most of the gardens bounding the application site will not be impacted by the proposed development and 6 (No. 45, 46, 59, 68, 69 and 70 Dolphin Road) have a reduction in sunlight hours on the 21<sup>st</sup> March below 50% of their existing value.

The planning authority raised concerns regarding the level of overshadowing of the rear amenity spaces associated with houses along Dolphin Road. I note that 6 of the 52 houses assessed (i.e c.11.5%) will experience a reduction in sunlight on the 21<sup>st</sup> March and therefore fall short of BRE guidance. 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.

#### No. 62-74 Herberton Road

These houses face the application site located on the eastern side of Herberton Road. Block F addresses Herberton Road and is 4 storeys in height at this point. I am satisfied that the extent of overshadowing experienced is confined to the front gardens and complies with the BRE guidance. Furthermore I note that the critical amenity space associated with these houses (ie the rear gardens) are not affected by the shadow cast by the proposed development. I am satisfied that the proposed development would not have an adverse impact on the amenity of the properties in terms of overshadowing.

#### Thistle House:

Thistle house is located to the south of the application site and is separated from the site by the access road to Glenview Industrial Estate. Given its location to the south of the proposed development it is not considered to cause an obstruction to sunlight, and as such no further tests in respect of overshadowing is required.

#### Site to the South

Glenview Industrial Estate bounds the application site to the south. Given its location to the south of the proposed development it is not considered to cause an obstruction to sunlight, and as such no further tests in respect of overshadowing is required.

### **10.4.5 Potential Impacts during Construction Phase/Operational Phase.**

#### **10.4.5.1 Construction Phase:**

Observers have raised concerns that the amenities of local residents would be impacted by noise, dust, vibrations, traffic and potential structural damage during the construction phase of the proposed development.

A Preliminary Construction & Demolition Waste Management Plan (pCDWMP) 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 Preliminary Construction Management Plan (pCMP) 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 pCMP 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 .

The pCMP sets out that prior to works commencing on site in the form of a strip out contract, a detailed intrusive Asbestos Survey will be undertaken as required by current Regulations (Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006-2010 to identify if any Asbestos Containing Material (ACM) is present. This is acceptable, in my opinion.

I have examined the pCMP and pCDWMP 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.

#### Foundation Systems and potential Impacts:

A 'Technical Note on Proposed Foundation Systems' is also included with the application. This sets out that as the site is currently occupied by low rise industrial units the opportunity has not presented to carry out a detailed site investigation to an extent that provides sufficient information to carry out detailed design for foundation systems. In the absence of such information the most likely ground conditions are estimated using local knowledge and data from GSI for nearby sites that have been developed recently. It is anticipated that a layer of made ground overlies gravels on stiff boulder clays. The depth to bedrock is likely to be in excess of 7m below ground level. Ground water is likely to be located at circa 4.5m below the existing ground level. Therefore it is not anticipated to create a significant risk at construction stage.

Based on the anticipated ground conditions a piled foundation system is proposed. The applicant has submitted that given the scale of the development and the loading from the building superstructures. The primary superstructure systems shall be supported on reinforced concrete ground beams and pilecaps. In general the basement may be formed by battering back the sides as there is sufficient room on the site. Where the basement line is close to the site boundary a temporary retaining structure will need to be installed. The temporary system shall be designed by the main contractor, however for preliminary design a kingpost retaining system is suggested.



The applicant has submitted that the preliminary design of the foundation systems for the proposed development outlined in the application documentation are based on limited ground conditions data and are therefore considered a conservative but viable structural solution. Once the site has been cleared of the existing buildings a detailed site investigation can be carried out that can determine critical data for the detailed design of the foundation systems. This is the normal process where the structural systems are developed to scheme design only at planning stage.

The application documentation includes inter alia 'Technical Note on Proposed Foundation Systems'. plans & details, Preliminary Construction Management Plan, Preliminary Construction & Demolition Waste Management Plan. I note the Planning Authority have not raised concerns on this matter. I am of the view that if the Board is of a mind to grant permission that this matter can be addressed by condition. Detailed technical Specification and working drawings are normally the next step in the process for developing a site and the difference in the level of detail between 'planning drawings' and 'working drawings' is substantial. Specifics would also be required to be addressed in a detailed Method Statement for the works, a CMP and CDWMP. Furthermore the developer will be required to adhere to best practice and relevant regulations and certificates, all of which would be overseen by a signed certifier.

I note that observers have raised the issue of damage to boundaries walls and have referenced historical damage that has occurred. The issue of previous damage to boundaries walls arising for past activities is beyond the remit of this report. With regard to the potential impact on adjoining boundary walls and structures I am satisfied having regard to the foregoing that this matter can be mitigated through the use of best practice and as noted above governed by the relevant regulations and certificates.

#### Excavations:

The proposed development includes the construction of a significant basement on the site. The excavated material – of which is expected to be inert clays and fill material – will be excavated and exported off site to a licenced landfill. The applicant acknowledges that Geotechnical investigations including a Waste Classification Report are yet to be undertaken at the site due to the presence of the existing buildings restricting the opportunity for a suitable investigation. I note that this is standard practice on site where the majority of the footprint is occupied by buildings that will be demolished as part of a development. This matter can be addressed by Method Statements and details to be submitted by condition, in my opinion.

Observers have raised concerns that outstanding matters (for example dust) should not be addressed by condition as this may require further assessments. I am of the view that construction related matters can be adequately dealt with by means of condition as is standard practice. However, if the Board is disposed towards a grant of permission, I recommend that a final Construction Management Plan, Construction & Demolition Waste Management Plan and Method Statement for excavation works be submitted and agreed with the Planning Authority prior to the commencement of any works.

#### **10.4.5.2 Operational Phase:**

Observers have raised concerns regarding the potential noise associated with the use of the access ramp to the basement carpark and the location of the bin stores. While I acknowledge the concerns raised, I have no reason to believe that this would be an issue given the set back from the boundaries and the remove from the rear elevations of the nearest houses. I note that the planning authority recommended that bin stores be relocated, this is not necessary in my opinion.

Observers raised concerns that noise from the use of communal amenity areas and roof terrace would have a negative impact on their quality of life. A level of noise is to be expected in urban areas. I note that planning authority did not raise this as a concern. The applicant has submitted a Property Management Strategy Report with the application. This states 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. This is acceptable, in my opinion.

Having regard to the foregoing and subject to conditions I am satisfied that impacts at operational stage to the north, west and south can be controlled.

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

Observers have raised concerns that the proposed development would result in the devaluation of adjoining residential properties. I have no information before me to believe that the proposal if permitted would lead to devaluation of property in the vicinity.

### **10.5 Traffic & Transportation**

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

It is proposed to access the site via an existing vehicular access off Herberton Road which is proposed to be reduced from c.5-6m wide to c.3m in width. A pedestrian access (c.2m in width) is also which separated slightly from the vehicular entrance by a proposed planting area. The proposed access road is noted as a 'shared surface' but as highlighted, a segregated pedestrian route is also provided. The provision of pedestrian priority at the proposed vehicular access onto Herberton Road is welcomed by DCC Transportation Planning Division. A section of the public footpath is included within the red line boundary in order to facilitate footpath repairs and extinguish some vehicular entrances. A Letter of Consent from DCC's Environment and Transport Department for works in this area is included with the application.

The Transportation Assessment Report (TAR) includes a Stage 1 Road Safety Audit and Quality Audit of the proposed development. The audit report highlighted a number of issues concerning issues outside the red line boundary and the control of the applicant, namely the lack of a controlled pedestrian crossings and cycle facilities on the Herberton Road/Dolphin Road junction. The report also noted the lack of a vehicular dropped kerb to access no. 54 Herberton Road may impact on the proposed development. An noted by DCC Transportation Planning Division these issues arise outside the applicant's controls and therefore beyond the remit of this application.

Minor issues relating to access to car parking space at basement level identified within the Road Safety Audit has been noted and applicant's response is considered acceptable to DCC Transportation Department. Swept path analysis drawings are noted and they demonstrate that service access as well as emergency vehicle access to and from the proposed site is achievable albeit with some crossing of the opposite lane by large and infrequent vehicles which is acceptable in this instance. Refuse collection and service arrangements for residential and commercial uses are clarified within the Operational Waste Management Plan (OWMP) for the development. The OWMP notes that 2 no. waste storage areas are located at basement level, one allocated to commercial and one to residential. The OWMP also notes that a temporary waste storage area or staging area is proposed adjacent to the basement ramp where a waste contractor will collect bins. Sufficient space is provided to store the waste receptacles without impacting vehicle or pedestrian movements. *A swept path analysis drawing indicating a refuse vehicle can access and egress to collect waste receptacles at the temporary waste storage area is noted.*

DCC Transportation Planning recommended that the applicant should be requested to submit an updated plan drawing indicating physical interventions such as planters or bollards to restrict vehicle access along the public footpath fronting the development for the agreement and approval of Dublin City Council's Transport Advisory Group (TAG) of the Environmental and Transportation Department.

No proposals to request Dublin City Council to "take in charge" the roads or footpaths within the site are included within the submission.

The TAR outlines the various existing and proposed public transport facilities located within the vicinity of the proposed development including bus and Luas services. The nearest Dublin bus stops are located within a 5 minute walk of the proposed development. The Suir Road and Rialto Luas stops both being within 9 minute walk of the site. Of note, the Crumlin Road and Dolphin's Barn Street forms part of the proposed BusConnects, CBC 09 Greenhills to City Centre route which is within close proximity of the site.

Having regard to the foregoing I have no objection on the ground of access and traffic safety.

### **10.5.2 Parking**

#### Car:

The application site is located in Parking Area 2, Map J of the Dublin City Development Plan 2016- 2022. Table 16.1 sets out the maximum car parking standards for various uses. In Zone 2: Retail (1 space per 275sq.m GFA) and residential (1 per dwelling). 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

60 no. car parking spaces are proposed, 49 at basement level and 11 at surface level (of which 5 are dedicated car share spaces) at a ratio of 0.40 car space per unit or 0.43 including the car share spaces. Accessible car parking at 3 no. spaces complies with the minimum 5% Development Plan standards.

The TAR has stated that each car space is proposed to be rented on a first-come first-served basis and allocated by the management company. The TAR also outlines that each car space will be future proofed for the provision of electrical charging point with an intimal 10% of spaces equipped with charging facilities at time of opening.

DCC Transportation Planning noted that the proposed car parking ratio of 0.33 for residents is in-line with similar permitted developments within the local area of the site. Therefore, having regard to 0.33 ratio and the 5 no. car share spaces in addition to these resident spaces, access to public transport and cycle parking provision, the level of proposed car parking is considered acceptable by DCC Transportation Planning Section in this instance. The Chief Executive report raised no objection to the proposed parking provision.

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 60 no. car parking spaces, which is 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 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.

A Material Contravention statement regarding carparking standards 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.

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, 370 no. spaces, is located at basement and ground floor level.

Of which 316 no. cycle spaces are proposed for residents and visitors at ground level and at basement level. 162 no. secure resident cycle spaces within compounds are located at basement level with a further 84 no. located within at 2 no. secure compounds at ground level. 26 no. visitor spaces are also located at basement level with a further 44 no. visitor cycle parking spaces are located at ground level by way of clusters of Sheffield type stands located at 5 locations which provides a total of 70 no. visitor spaces within the proposed development. Access to the cycle parking area at basement level is via a dedicated bike lift located adjacent to the vehicular ramp in Block A which provides access to the two no. cycle stores.

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.

#### 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.

2 no. motorcycle spaces are proposed. This has regard to the 4% minimum standard set out in the City Development Plan which is acceptable.

#### Traffic Impact:

The TAR submitted with the application takes into account adjustment to a traffic survey carried out during the Covid-19 pandemic. The predicted impact on the road network is less than 5% and the report states that the “proposed development will have negligible and unnoticeable impact upon traffic conditions locally beyond the site access junction”.

## **10.6 Services & Drainage**

It is proposed to drain the foul and surface water generated from the property using a completely separate system in compliance with the Greater Dublin Drainage strategy requirements. All roofs shall be finished with sedum which will act to slow down rainwater. Run-off from the high level roofs shall be directed into low level planters/ soft landscaping systems and the subbases to the permeable surfacing to be introduced at ground level. The foul sewage generated will be discharged via the foul drainage network and discharge to the 600mm concrete public combined sewer via the existing 225mm diameter connection.

Foul run-off from the basement level shall be negligible with any run-off in the car parking and plant areas directed to a class 2 petrol interceptor and pumping station where is lifted to a ground level manhole connected to the gravity foul system

The applicant's Water Service Report outlines that detailed site investigations and survey works will be carried out ahead of the construction process and using the results the detailed surface water design can be carried out which shall then be submitted to DCC in advance of the construction process.

The surface water strategy is coordinated with the site landscaping in order that surface water is retained on site. At least 2 stages of surface water treatment is provided commencing with all roofs being covered with sedum. Run-off from the sedum roofs shall be directed to irrigate low level planters and soft landscaping on the site. General surface water run-off shall then be directed to the subbase of the ground level street and courtyard which is formed with a layer of 20-40 crushed limestone including the areas directly over the basement podium slab. All surface paving shall be formed with permeable systems. The sub-base layer shall also act to provide a hydrocarbon filtration system for any run-off from the limited parking areas at ground level. Each block shall have its own outfall manhole constructed in accordance with the GDSDS code of practice. The combined run off from the blocks run-off is ultimately directed a deeper storage volume of crushed stone over the courtyard where it can soak to ground during normal rainfall events or be attenuated during significant storm events with any run-off limited to 2.0l/s.

The applicant has acknowledged that as the site is covered with existing structures and hard standing, it has not been possible to carry out accurate soakaway tests or other site investigations on the site in advance of this planning application. At a later stage a demolition and site clearance contract can be carried out and a thorough site investigation which will include the ground permeability along with other critical geotechnical information for foundation design and waste classification. The submitted Water Services Report outlines that detailed calculations can then be carried out to determine the quantum of run-off that is contained on site along with any surplus discharge which is directed to attenuation systems. The applicants report sets out that in the absence of a soakaway test a conservative value has been used for subsoil permeability and that the subbase crushed stone system storage volume required is well exceeded given the overall scale of the site and how the central area and access road has been laid out. The calculations show that an average of 27m<sup>3</sup> of storage per block is required for an effective soakaway and the effect of the sedum roof has not been considered in the calculation. Using this subsoil permeability the total soakaway volume required is 163m<sup>3</sup>. Site constraints limit the storage volume to a total volume of 153m<sup>3</sup>, provided at the courtyard area and to the rear of Block F. The applicant has submitted that the soakaway system will also perform as an attenuation system and as such the volume provided is more than sufficient. I note that DCC Drainage Division have not raised objections subject to standard conditions.

Irish Water have outlined in their submission on file that the New connection (water) to the existing network is feasible without upgrade. A new 150mm ID pipe main to be laid to connect the development to the existing 6" CI main. And no surface water from the development shall enter the Irish Water network. And advised that the applicant shall liaise with the Local Authority Drainage Division to agree full details of the proposed surface water. 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**



Observers and Elected Representatives raised concerns regarding flooding of the site and adjoining lands/properties.

Dublin City Development Plan 2016-2022 Vol. & Strategic Flood Risk Assessment (SFRA) shows the access road and part of the entrance area of the site is located in Flood Zone B and part in Flood Zone C.

I note that the access road and part of the entrance area are located on Flood Zone A and part in Flood Zone B. Block F appears to bound or partially overlap onto flood zone A and B with the remainder of the buildings predominantly on flood zone C with some overlaps onto Zone C. I note that the DCC Chief Executive Report states that the site is located on Flood Zone C.

A Site-Specific Flood Risk Assessment Report (SSFRA) is submitted with the application. Given the location of the site partially within Flood Zones A&B a Justification Test has been carried out. The SSFRA contains a) Justification Test for Development Plans (section 5.2) and b) Justification Test for Flood Risk (section 5.3).

The Submitted SSFRA identifies that part of the proposed development site is at risk of fluvial and pluvial flooding which are interlinked by the Poddle Culvert system and surcharging in the local drainage network which can be considered during a 1 in 100 year storm event.

The SSFRA states that flooding on the existing site is known to occur during rainfall events where gullies in the access road cannot convey storm water run-off from the impermeable site to the storm water drainage system. And that the flood map clearly shows the flood zones on the existing access road only.

The layout of the proposed development shows all new residential structures arranged to surround the area of the existing access road such that they are located in flood zone C only. The courtyard and parking area at the centre of the site is significantly larger than the existing access road and any overground flooding can easily be accommodated within that area at much shallower depths.

The floor level for Block F has been set at +23.30m AOD which again is above the local overground flood levels and ground floor shall be used for 'less vulnerable' commercial uses only. All residential in Block F units shall be located at the higher floors.

Justification Test for Flood Risk:

- The at risk area of the development are located along the existing access road off Herberton Road. The flooding is localised overground flooding and the proposed development layout allows for a much larger ground level courtyard than the existing access road that will accommodate any existing flood pattern. Site levels will ensure that over ground flooding cannot enter the proposed buildings.
- The finished floor level of block F shall be set at +23.30m AOD with localised ramps falling away from the development to prevent overground flooding entering the building. The ground floor shall be used for commercial purposes and so is less vulnerable and so the development is justified.
- The significant improvements to the treatment of surface water run-off from the site are described elsewhere in this report and in the CORA water Services report. The proposals meet the requirements of Dublin City Council and shall also mitigate the flood risk for the site along with the improvements in water quality. Therefore, the development meets the justification.

Remaining residual flood risk, following the justification test for flood risk assessment include overground flood exceedance or (pluvial) flooding where local drainage infrastructure is surcharged during high water levels in culverts and extreme rainfall events at Block F at Herberton Road only.

Proposed mitigation measures to address residual flood risk include:

- Local demountable flood barriers can be deployed at the entrance to the commercial ground floor unit on Herberton Road. The low levels of the overground flood show that the 'Floodgate' type barrier is appropriate for this part of the development.
- Flood Gate System (Heavy Duty) is to be provided across the top of the car ramp access/egress to the car park. It is hydraulically operated but yet has a manual override in the event of a power/mechanical failure, it can still be closed or opened.
- Entrance thresholds shall be suitably sloped to allow overground flows to be directed away from the buildings in line with local topography on the surround streets including the entrance ramp to the basement car park.
- An emergency plan and advanced warning systems such as alarms or notifications will be implemented for the commercial unit in Block F located in Flood Zone B.
- The new site drainage systems shall be regularly maintained by the site management company on a regular basis to reduce the risk of blockages.
- The new building shall be constructed using reinforced concrete and other modern contemporary materials that shall ensure a flood resilient external envelope to the new buildings

The nature and form of the development contributes to mitigating the flood risks within the development site. A possible source of flood risk from the surcharging or blockage of the development's drainage system has been identified. This risk is mitigated by the integrated landscaping and surface water treatment strategy for the site. The development's drainage design includes for a 20% climate change allowance. The surface water run-off rate when compared with the existing site will be significantly reduced to a negligible amount and satisfies the requirement of the SFRA to reduce flooding and improve water quality.

For clarity I draw the Board attention to the reference in the SSFRA to 'commercial units' and entrances to Block F. There is one retail unit at ground floor level and the entrance Block F which comprises lobby and circulation spaces to access the upper floors.

Based on the information submitted the scheme passes the Justification Test and is deemed appropriate on the basis that the mitigation measures stipulated, including the installation of demountable flood barriers for the commercial unit and basement entrance ramp, are met for the parts of the development within Flood Zones A and B. I note that DCC Drainage Division have no objections subject to conditions. I have reviewed the available information and I note that the residential buildings are located in Flood Zone C with the retail unit (ground floor of Block B) within Flood Zones B. I consider, subject to the implementation of appropriate mitigation measures as contained in the submitted SSFRA that the proposed development passes the justification test and is acceptable from a flood risk point of view.

## **10.7 Ecology**

### **10.7.1 Bats:**

Observers have raised concerns regarding the presence of bats. A Bat Fauna Survey Report (dated 10<sup>th</sup> December 2021) is submitted with the application. (refers to a Bat Emergent survey and building inspections carried out on the 20<sup>th</sup> September 2020). The report noted that-at dusk, a bat detector survey was carried out onsite using a Batbox Duet heterodyne/frequency division detector to determine bat activity. Surveys and reports that are between twelve and eighteen months old are generally considered to be valid unless, for example, site conditions have changed. No changes have taken place on site.

The report concluded that no foraging or potential bat roosts were noted on site. No impacts are foreseen on bats. The proposed building façade will be composed of solid materials and would be easily visible to bat species. No impact is foreseen on bat species. The site located in a brightly lit urban area which is of poor foraging potential for bat species. The majority of buildings are poorly insulated warehouses with a low thermal mass. As a result, they would heat up and lose heat quickly and would not provide a stable roosting temperature for bat species. No mitigation measures are required.

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. I am satisfied that this can be addressed by condition if permission is granted.

I note Observers have raised the issue of bat strikes. I have no evidence before me that this may be the case.

#### **10.7.2 Birds**

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 26.1m. 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 14 units (1 no. studio, 8 no. 1 bed, 4 no. 2 bed (4 person) & 1 no. 3 bed) are currently identified as forming the Part V housing. The Chief Executive Report note 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.199.7sq.m retail unit is proposed on the ground floor of Block F. This fronts onto and addresses Herberton Road. 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 Social Infrastructure**

Concerns have been raised by observers and public representatives that there is a lack of available social infrastructure in the area to meet the needs to the existing community and additional demand arising from the proposed development will further exacerbate this situation.

A 'Social Infrastructure Audit' has been submitted with the application. This has examined existing range of social infrastructure within the vicinity of the subject site. If the existing social infrastructure provision supports the needs of the existing population; and sought to offer insights into the likelihood of the capacity of the existing services and facilities to support future residents. The applicant's audit examined educational facilities, childcare facilities, community facilities, arts & cultural facilities healthcare services, open space & recreation, religious institutions and retail centres & services.

The applicant's 'Social Infrastructure Audit' identified and established the level of existing social infrastructure provision within and bordering the c.1km study area to support the needs of the existing population and offered insights into the likelihood of the capacity of the existing services and facilities to support future residents. The baseline study undertaken identified a significant range of services which contribute to quality of life for local residents located in close proximity to the application site. The application submitted that, on the basis of the audit, the proposed development is supported by an existing schools' network, childcare facilities and has access to a range of other community, cultural, religious and recreational facilities within the identified c.1km radius.

A total of 20 no. education and training facilities were identified within or just outside the Study Area. Within the Study Area, 9 no. primary schools, 2 no. post primary schools and 9 no. third level facilities were recorded.

A total of 11 no. schools (9 no. primary and 2 no. post primary) were identified within the 1km boundary of the site. These schools held a combined enrolment of 2,440 no. students during the 2020/21 school year, as per the Department of Education and Skills (DES) records. 1no. school was an all-boys school and 1no. of the schools was an all-girls school, while the remaining 9no. schools were co-educational (mixed).

A total of 16 no. childcare facilities were identified in the Study Area using the latest Tusla Early Years Inspectorate data<sup>1</sup> which could be accessed within a c.1 km radius (including the ones that are located just outside the 1km radius) of the site.

There are numerous community facilities proximate to the subject site such as Clay Youth Project, Dolphins Barn Library, Rialto Parish Centre, Sundrive Garda Station and Dolphins Barn Fire Station.

The closest art/cultural facility to the subject site is the Irish Museum of Modern Art.

The development is well served by a large number of existing healthcare facilities. In total there are 28 no. healthcare facilities in the Study Area. These include Hospitals, Healthcare Centres, Pharmacies, Nursing Homes and Specialist Clinics.

There are a broad range of facilities for open spaces, sports, and recreation in the Study Area. The facilities are covered in three categories. These include Sports Centres and Grounds, Parks, Playgrounds, Nature Trails and Gardens, and Other Training Facilities. The subject site is served by numerous open, sports and recreational spaces in less than 500m distance, with Dolphins Barn Green (park) and Dolphins Road Outdoor Gym located adjacent to the subject site.

There are 11 no. religious institutions, including 4 no. cemeteries and 6 no. churches. The closest of these facilities to the subject site are Church of Our Lady of Dolours and Church of Our of the Holy Rosary of Fatima.

A review of the retail offerings within a c. 1km radius of the subject site was also conducted, which identified a significant offering within 15-25 minutes walking distance of the site. The site is served by retail services that include Dunnes Stores (previously part of the Crumlin Shopping Centre), Lidl, Spar, Centra, Londis, Tesco Express and a number of independent speciality retailers.

The applicant submits that the existing social infrastructure provision identified within the c. 1km study area, in conjunction with the commercial space proposed with the development will be capable of serving the existing population and potential demand generated by the proposed development scheme, with no significant gaps in the existing services network identified.

I have reviewed the applicants audit and noted that concerns raised by third parties. I also note that the planning authority has not raised concerns in this regard and a review of the social infrastructure is also being undertaken as part of the overall review of the City Development Plan. Based on the information before me I see no justification to refuse permission on the ground of available social infrastructure.

## **10.11 Childcare**

A total of 16 no. childcare facilities were identified in the Study Area using the latest Tusla Early Years data which could be accessed within a c.1 km radius (including the ones that are located just outside the 1km radius) of the site.

The applicant has argued in the documentation submitted that as the-potential childcare uptake of the proposed 137 no. BTR apartments is likely to only be 7- 11 no. spaces (as sections 6.2 and 6.3 further details) and therefore, there is sufficient capacity from the existing facilities to absorb the demand generated from the proposed development. The Planning Authority have not raised concerns in this regard.

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.

The proposal does not include provision for a childcare facility and the matter has been addressed in the submitted 'Social Infrastructure Audit' which included a Childcare audit and assessment to determine the existing childcare provision in the vicinity. The applicants support their argument for non-provision by reference to existing and permitted childcare facilities within the locality. I am satisfied with the justification put forward in this regard.

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.

## **10.12 Other Matters**

### **10.12.1 Archaeology**

Observers raised concerns that no Archaeology report has been submitted with the application. 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 standard condition for archaeological monitoring during ground works if the Board is of a mind to grant permission.

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

Observers have raised issue with the development material contravening the current Development provisions relating to Architectural Conservation Areas (ACA). The site is not located within an ACA, therefore this does not arise in my opinion.

Observers also 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 Material Contravention**

The applicant has submitted a material contravention statement in relation to the matter outlined above, the 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.

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 8 storeys (c.26.1m) exceeds the prescribed height in the development plan (24m residential). I consider the exceedance in terms of metres proposed to be material.

The current proposal has apartment buildings that range in height from 2 to 8 storeys (max 26.1m). 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.

I have set out my concerns regarding compliance with section 3.2 of the Building Height Guidelines in section 10.2.1 of this report. I am of the view that material contravention is not justified in this instance.

Having regard to the provisions of Section 37(2)(b) of the Planning and Development Act (as amended), I do not 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 refusal of planning permission for 2 reasons:

- 1. Having regard to Variation 22 of the Dublin City Development Plan 2016-2022, notwithstanding the inclusion of a masterplan, it has not been demonstrated that the proposal has been considered as part of an overall strategy for the masterplan lands, in terms of site layout, height strategy, legibility, connectivity, permeability and mix of uses, is therefore not in accordance with the Z10 Land Use Zoning objective for the site. The proposed development would therefore, by itself and by the precedent it would set for other development, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the surrounding urban structure and the pattern of development in the area, to the form, bulk, scale and height of the proposal and the separation distances to the rear of adjoining properties and site boundaries, it is considered that the proposal does not provide an appropriate transition in scale or have due regard to the nature of the surrounding urban morphology. The proposal is considered overly dominant, would appear incongruous, would have an excessively overbearing effect on adjoining property, would unduly overlook third party private open space. Furthermore it is considered that the proposal would have a negative impact on the development potential of adjoining property. The proposed development would therefore seriously injure the amenities of property in the vicinity and the character of the area, would depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.*

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 commercial/warehousing structures and hardstanding (c.4299.9 sq.m) and construct 137 no. BTR apartments in 6 blocks including 1 no. retail unit on a site with a stated area of c 0.7654ha. The site is located on a brownfield site within the urban footprint of Dublin city. The site is not located within any designated Archaeology zone of Interest. It is adjacent to the Royal Canal Conservation area with a small section of the northeastern portion of the site is located within it. 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 preliminary CMP, preliminary CDWMP, a 'Technical Note on Proposed Foundation Systems', a Bat Fauna Survey, a Landscape Report, An Arboricultural Impact Assessment & Method Statements and a Wind and Microclimate Modelling Study 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:

- Architects Design Statement.
- Herberton Road Master Plan
- CGIs and Verified Views
- Townscape and Visual Impact Assessment
- Planning Report & Statement of Consistency
- Social Infrastructure Audit
- Transportation Assessment Report
- Water Services Report
- Landscape Report
- Daylight and Sunlight Assessment Report.
- Building Life Cycle Report.
- Fire Safety and Use Design Strategy
- Property Management Strategy Report
- Mechanical & Electrical Services Planning Sustainability Report
- Site Lighting Report
- Operational Waste Management Plan.
- Preliminary Construction Management Plan
- Preliminary Construction and Demolition Waste Management Plan
- Technical Note on Proposed Foundation Systems
- Arboricultural Impact Assessment & Method Statements

- Wind and Microclimate Modelling Study
- Appropriate Assessment Screening report.
- Bat Fauna Survey
- Site Specific Flood Risk Assessment (which includes Justification Test)
- Statement on EIA Screening Process Pursuant to Article Section 299B of the Planning and Development Regulations 2001

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 Fauna Survey and Preliminary CMP.
- The Water Framework Directive (WFD) (Directive 2000/60/EC) and The Groundwater Directive (Directive 2006/118/EC). The EIA Screening statement AA Screening Report and Water Services 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) which included Justification Test 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 Z6 in accordance with the Dublin City Development Plan 2016-2022 which was subject to SEA. And the subsequent SEA Screening Determination for Variation 22 which changed the land Use Zoning to Z10.
- The Waste Framework Directive 2008/98/EC thorough the design of the proposed development and the mitigation measures set out in the Preliminary Construction Management Plan, the Preliminary Construction & Demolition Waste Management Plan, Water Services 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. And the subsequent SEA Screening Determination and AA Screening for Variation 22 which changed the land Use Zoning to Z10.

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), the nature of the proposed development (Height) and locus 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 Grand Canal ACA and the Board is referred to section 10.2 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 the Former G45 property, Herberton Road, Dublin 12 a residential development comprising the demolition of commercial buildings/warehouses and hardstanding areas and the construction of 137 no. BTR apartments, 1 no. retail 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 report submitted with the application concluded that there are no significant impacts on Natura 2000 sites arising from this planned development and that a Natura Impact Statement (NIS) is not required.



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

### **Description of Development**

The applicant provides a description of the project in page 4 of the Appropriate Assessment Screening Report. I refer the Board to section 3 of this report.

### **Description of the Site Characteristics**

The applicant provides a description of the project in page 4 of the Appropriate Assessment Screening Report. The site has a stated area of c.0.7654ha in Dublin inner city. The site currently contains disused/vacant commercial buildings/warehouses/sheds, 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 and the closest watercourse is the Grand Canal c.61m north of the site. There are no European sites in the immediate vicinity of the site.

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

The submitted AA Screening report does not identify specific consultations with prescribed bodies but does refer to a desktop review of published documents and information.

The application was referred to the following prescribed bodies: The Minister for Culture, Heritage and the Gaeltacht, The Heritage Council, An Taisce , Irish Water, Transport Infrastructure Ireland and National Transport Authority.

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.

An AA Screening Report is 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**

There 14 Natura 2000 sites within 15km of the application site and are referred to in the applicant's Appropriate Assessment Screening Report. 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).
- Knocksink Wood SAC (site code 000725).

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).

The submitted AA screening report identifies all sites within a 15km radius of the site, 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.

The applicant's AA Screening report notes *"No European sites are within the potential Zone of Influence (Zol). The Zol of the proposed project would be seen to be restricted to the site outline with potential for minor localised noise, dust and light impacts during construction. Drainage from site, both foul and surface water, would be seen as the outputs from the site during construction and operation that could potentially extend the potential Zol. However, the proposed development is not directly hydrologically linked to a European site."*

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 EPA Appropriate Assessment Tool ([www.epa.ie](http://www.epa.ie)), 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>	<p>c.5.4km to the east of the site</p>
<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>	<p>c.8.3km to the north east of the site</p>
<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.5.4 km 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.8.3km to the north east 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 from operational wastewater discharges from Ringsend WWTP to Dublin Bay / Liffey Estuary Lower.

### **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 Grand Canal Main Line is c.61m north of the site. The River Camac, 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.

In relation to the operational phase of the development, I note the development includes attenuation proposals whereby it is intended that surface water which will be retained on site used for irrigation for low level planters and soft landscaping on site, or will be dissipated into the ground level street and courtyard which is formed with a layer of 20-40 crushed limestone or discharged during storm events. All surface paving will be formed with permeable systems for this reason

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 **REFUSED** under section 9(4)(d) of the Act for the reasons and considerations set out below.

## 14.0 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 21<sup>st</sup> December 2021 by Herberton Road Developments Ltd care of KPMG Future Analytics.

#### Proposed Development:

The demolition and clearance of all existing vacant warehousing/commercial structures and hardstanding (c.4,299.9 sq.m) and the construction of a development consisting of Build-to Rent (BTR) residential units (c.12,399.5 sq.m GFA (excluding basement)) comprising 137 no. apartments (8 no. studios, 74 no. 1-bed, 50 no. 2-bed and 5 no. 3-bed) in 6 no. blocks ranging in height up to 8 no. storeys over basement level (c.1,897 sq.m GFA) with private open spaces as balconies / terraces and a retail unit on ground floor level fronting onto Herberton Road (c.199.7 sq.m GFA).

The total gross floorspace (GFA) of the overall development is 14,296.5 sq.m (including basement), of which 14,096.8 sq.m is residential and 199.7 sq.m is non-residential.

The development is described on a block by block basis as follows:

Block A (1,337.7 sq.m GFA): 2 no. to 3 no. storey over basement apartment building consisting of 15 no. apartments with associated balconies / terraces comprising 3 no. studio apartments, 5 no. 1-bed apartments and 7 no. 2-bed apartments. Block A includes the provision of bicycle parking at basement level (110no. spaces) which is served by a dedicated bicycle lift;

Block B (1,481.8 sq.m GFA): 3 no. storey apartment building consisting of 17 no. apartments with associated balconies / terraces comprising 1 no. studio apartment, 8 no. 1-bed apartments and 8 no. 2-bed apartments;

Block C (2,152.7 sq.m GFA): 5 no. storey apartment building consisting of 25 no. apartments with associated balconies / terraces on all sides comprising 1 no. studio apartment, 10 no. 1- bed apartments and 14 no. 2-bed apartments;

Block D (4,083.1 sq.m GFA): 8 no. storey apartment building over basement consisting of 45 no. apartments with associated balconies / terraces comprising 2 no. studio apartments, 30 no. 1-bed apartments, 8 no. 2-bed apartments and 5 no. 3-bed apartments. Block D also includes the provision of a communal laundry room at basement level;

Block E (1,928.5 sq.m GFA): 5 no. storey over basement apartment building consisting of 19 no. apartments with associated balconies / terraces on all sides comprising 1 no. studio apartment, 7 no. 1-bed apartments and 11 no. 2-bed apartments. Block E also includes the provision of bicycle parking at basement level (58no. spaces);

Block F (1,415.7 sq.m GFA): 5 no. storey mixed-use building consisting of 16 no. apartments with associated balconies / terraces on all sides comprising 14 no. 1-bed apartments and 2 no. 2-bed apartments and a retail unit (199.7 sq.m GFA) on ground floor level facing on to Herberton Road.

The proposed development also includes the provision of internal resident support facilities and resident services and amenities, including a reception hub, parcel room, multi-purpose / screening area, laundry room, meeting rooms, bookable function rooms, work/study room, coffee facilities, games room, a gym / fitness room and a communal roof terrace at second floor level located in Blocks D and E (totalling 657.3 sq.m), as well as hard and soft landscaped external communal amenity spaces at ground level, including perimeter amenity spaces with integrated play facilities, seating areas, perimeter walk known as 'Amenity Areas' A-E and a central courtyard space (totalling c. 2,365 sq.m).

Access to serve the proposed development will be provided via a single, multi-modal, raised platform entrance onto Herberton Road at approximately the same location as the existing entrance.

The proposal includes 60 no. car parking spaces, of which 49 no. spaces are at basement level and 11 no. spaces are at surface level including 3 no. accessible car parking spaces, 5 no. dedicated car share spaces and 6 no. spaces with EV charging facilities)

2 no motorbike parking spaces and 316 no. cycle parking spaces (246 no. resident parking spaces and 70 no. visitor parking spaces) to be managed per the submitted Transportation Assessment Report.

Planning permission is also sought for all ancillary site and development works above and below ground to facilitate the development, service / plant facilities including an ESB Substation, switch room, communications room, generator room and plant rooms (totalling 276.2 sq.m), refuse stores (totalling 96.9 sq.m), public lighting, extensive boundary treatments, green roofs, rooftop PV arrays, water services and all necessary site development and infrastructural works.

The application contains a statement setting out how the proposal will be consistent with the objectives of the Dublin City Council 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.

## **Decision**

**REFUSE** permission for the above proposed development for the reasons and considerations set out below.

## **Matters Considered**

In making its decision, the Bord 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**

1. It is considered that the proposed design strategy, by reason of its excessive scale, massing, dominant form, overbearing impacts and insufficient transition provision, proximate to domestic scale dwellings, does not provide the optimal design solution for the site having regard to the site's locational context and is considered not to be in compliance with Criteria No. 1 'Context' of the Urban Design Manual, published by the Department of Environment, Heritage and Local Government, 2009. The proposal is considered not to respect the form of buildings around the site's edges and the amenity enjoyed by neighbouring users and the development does not positively contribute to the character and identity of the urban neighbourhood at this location. Having regard to all of the above, the proposal is considered to be unacceptable and contrary to the proper planning and sustainable development of the area.
2. The proposed development fails to meet the criteria in section 3.2 of SPPR3 as set out within Urban Development and Building Heights, Guidelines for Planning Authorities, published by the Department of Housing, Planning and Local Government in December 2018, in that at both site and neighbourhood level, the proposed development fails to successfully integrate into the existing character of the area. The proposal is considered overly dominant, would appear incongruous, would have an excessively overbearing effect on adjoining property, and would unduly overlook third party private open space of adjacent properties along Dolphin Road. Furthermore it is considered that the proposal would have a negative impact on the development potential of adjoining property/land. The proposed development, therefore, would result in a visually dominant and overbearing form of development when viewed from the surrounding area and in particular from the houses bounding the site along Dolphin Road and does not provide the optimal design solution for the site

It would seriously injure the amenities of property in the vicinity and the character of the area and would be contrary to the proper planning and sustainable development of the area. The proposal would, therefore, be contrary to the Urban Development and Building Heights, Guidelines for Planning Authorities, published by the Department of Housing, Planning and Local Government in December 2018, and would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The Board considered that the proposed development by reason of the sub optimal quality of the proposed communal open space and its limited access to sunlight would seriously injure the residential amenities of future occupants of the proposed development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

---

Dáire McDevitt  
Senior Planning Inspector

18<sup>th</sup> May 2022

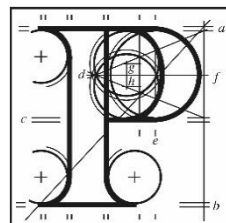
**Appendix 1** List of documentation submitted with the application  
**Appendix 2** EIA Screening Form

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

Documentation submitted with the application included inter alia:

- Planning Report and Statement of Consistency
- Statement of Response to An Bord Pleanála's Opinion
- Statement of Material Contravention
- Environmental Impact Assessment Screening Report
- Social Infrastructure Audit
- Architectural Drawings
- Schedule of Areas
- Architects Design Statement
- Housing Quality Assessment
- Herberton Road Masterplan
- Water Services Report
- Site Specific Flood Risk Assessment Report
- Preliminary Construction Management Plan
- Preliminary Construction and Demolition Waste Management Plan
- Technical note on Proposed Foundation Systems
- Letter of Confirmation of Irish Water Standards and Details
- Engineering Drawings
- Transport Assessment Report
- Operational Waste Management Plan
- Landscape Report
- Landscape Drawings
- Arboricultural Impact Assessment and Method Statements
- Tree Schedule
- Tree Constraints Plan
- Tree Impact and Protection Plan
- Appropriate Assessment Screening Assessment
- Bat Fauna Survey
- Statement in accordance with Article 299B (1)(b)(ii)(II)(c)
- Townscape and Visual Impact Assessment
- Verified Views and CGIs
- Daylight & Sunlight Assessment Report
- Wind and Microclimate Modelling Study
- Building Life Cycle Report
- Mechanical and Electrical Services Planning Sustainability Report
- Site Lighting Report and Drawing
- Property Management Strategy Report
- Fire Safety and Use Design Strategy

## Appendix 2 EIA Screening Determination Form



An  
Bord  
Pleanála

### EIA - Screening Determination for Strategic Housing Applications

#### A. CASE DETAILS

An Bord Pleanála Case Reference		ABP-312300-21
Summary		
	Yes / No / N/A	
1. Has an AA screening report or NIS been submitted?	Yes	A Screening for Appropriate Assessment report was submitted with the application
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?	No	

<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>	<b>Yes</b>	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)
--	------------	---

<b>B. EXAMINATION</b>	<b>Yes/ No/ Uncertain</b>	<b>Briefly describe the nature and extent and Mitigation Measures (where relevant)</b>  (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact) Mitigation measures –Where relevant specify features or measures proposed by the applicant to avoid or prevent a significant effect.	<b>Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain</b>
<b>1. Characteristics of proposed (including demolition, construction, operation, or decommissioning)</b>			
<b>1.1 Is the project significantly different in character or scale to the existing surrounding or environment?</b>	<b>No</b>	The development comprises the construction of 137 BTR apartments and 1 no. retail unit on lands where residential is permitted in principle.	No
<b>1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?</b>	<b>Yes</b>	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.	No



<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>	<b>Yes</b>	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.	No
<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>	<b>Yes</b>	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.	No
<b>1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</b>	<b>Yes</b>	<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>	No

<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>	<b>No</b>	<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. Excavation and piling works to facilitate basement construction. 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 Management Plan and Asbestos Refurbishment/Demolition Report. will satisfactorily mitigate potential impacts.</p>	No
<b>1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</b>	<b>Yes</b>	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 Management Plan.	No
<b>1.8 Will there be any risks to human health, for example due to water contamination or air pollution?</b>	<b>No</b>	<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 Management Plan would satisfactorily address potential impacts on human health.</p> <p>No significant operational impacts are anticipated.</p>	No
<b>1.9 Will there be any risk of major accidents that could affect human health or the environment?</b>	<b>No</b>	<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.</p> <p>There are no Seveso / COMAH sites in the vicinity of this location.</p>	No

<b>1.10 Will the project affect the social environment (population, employment)</b>	<b>Yes</b>	Development of this site as proposed will result in an increase in residential units (137 apartments) which is considered commensurate with the development of a Z10 lands in Dublin City.	No
<b>1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?</b>	<b>No</b>	Current proposal is a standalone development, with small and medium scale developments in the immediately surrounding area. Site is part of a larger tract of lands which are the subject of a Masterplan	Yes
<b>2. Location of proposed</b>			
<b>2.1 Is the proposed located on, in, adjoining or have the potential to impact on any of the following:</b> <ul style="list-style-type: none"> <li><b>1. European site (SAC/ SPA/ pSAC/ pSPA)</b></li> <li><b>2. NHA/ pNHA</b></li> <li><b>3. Designated Nature Reserve</b></li> <li><b>4. Designated refuge for flora or fauna</b></li> <li><b>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</b></li> </ul>	<b>No</b>	<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 North Dublin Bay SAC North Bull Island SPA 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
<b>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?</b>	<b>No</b>	No such uses on the site and no impacts on such species are anticipated.	No

<b>2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</b>	<b>Yes</b>	The site does not contain any protected structures. it is not located within a designated Architectural Conservation Area or an Are of Archaeological Potential.	No
<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>	<b>No</b>	There are no areas in the immediate vicinity which contain important resources.	No
<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>	<b>Yes</b>	There are no connections to watercourses in the area. The development will implement SUDS measures to control surface water runoff. The site is partial located within Flood Zone A&B. A Justification Test has been carried out (see also section 10.6 in the Inspectors Report in relation to services and drainage)	No
<b>2.6 Is the location susceptible to subsidence, landslides or erosion?</b>	<b>No</b>	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.	No
<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>	<b>No</b>	The site is served by a local urban road network.	No
<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>	<b>Yes</b>	There are no existing sensitive land uses or substantial community uses which could be affected by the project.	No
<b>3. Any other factors that should be considered which could lead to environmental impacts</b>			
<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 is permitted in principle and the results of the Strategic Environmental Assessment of the Plan and SEA Screening Determination for Variation 22.</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 amended)</p> <p>(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),</p> <p>(h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and</p> <p>(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 Preliminary Construction and Demolition Waste Management Plan (pCDWMP), Preliminary Construction Management Plan (pCMP), Technical Note on Proposed Foundation System, the Operational Waste Management Plan and the Water Services Report, the Bat Fauna Survey, The Arboricultural Assessment and the Architectural Design Statement.</p>

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.

18<sup>th</sup> May 2022

**Daire McDevitt**  
**Senior Planning Inspector**

**Date**