



An
Bord
Pleanála

Inspector's Report

ABP-312425-22

Development

Demolition of extensions and ancillary structures; Alterations and change of use to residential use. Construction of 2 apartment buildings and 3 two storey units comprising of 64 Build to Rent residential apartment and all associated site development works.

Location

St. Mary's Home, Pembroke Park and 28A Clyde Lane, Dublin 4

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

2704/21

Applicant(s)

The Pembroke Road Partnership.

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellants

Barbara Rafferty

Noleen Kenny

Eugene and Joan Swaine

Olive Moran & Philip Dunne

Upper Leeson Street Area Resident's
Association

Dermot Gleeson

Catriona Ní Chuív

Herbert Park Area Residents Assoc.

Observer

Margaret Hannan

Date of Site Inspection

26/07/2022

Inspector

Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at St. Mary's Home, Pembroke Park and Clyde Lane, Dublin 4. The site is on the eastern side of Pembroke Park close to the junction of Pembroke Park and Clyde Road. It is triangular in shape, bounded on the north by St Conleth's College to the east by Clyde Lane, to the south by Ardoyne Lane and to the west by Pembroke Park.
- 1.1.2. A high granite wall forms the site boundary to Clyde Lane to the east of the site and there are two secondary entrances, (one a lychgate) from this side. The site includes of part of the former grounds of the adjoining mews at Clyde Lane.
- 1.1.3. Ardoyne Lane, adjoining to the south, is separated from the site by a brick wall. No. 2 Pembroke Park adjoins the southern side of the lane. The lane provides access to Ardoyne House, a 1960s apartment development to the south-east. Ardoyne Mews, a row of 2 storey houses in a contemporary mews style, with first floor terraces, bounds the site and front the lane.
- 1.1.4. The site bounds Pembroke Park to the front (west), with a granite wall with railing above and a vehicular entrance forming the site boundary. Pembroke Park is a straight road with footpaths (and street trees) to either side, joining Herbert Park to Wellington Place/Clyde Road, comprising two storey, semi-detached Victorian houses, in brick, with large front gardens.
- 1.1.5. Many buildings in the wider area are protected structures. Only one of the 31 residences in Pembroke Park, the dwelling at the junction of Clyde Rd and Pembroke Rd, is a protected structure. Those on Herbert Park are protected structures, two of which flank the southern end of Pembroke Park. The original building on St Conleth's College grounds is also a protected structure. The road is a residential conservation area.
- 1.1.6. A three storey red brick nursing home, currently vacant, occupies the site. The main structure has a double pitched roof. Later additions have flat roofs. It is orientated along a north-east / south-west axis with the south-west elevation addressing Pembroke Rd and the south-east elevation addressing Ardoyne Lane. The remainder of the site comprises garden areas to the east and south, with surface parking to the west and north-west. The existing building has three floors.

- 1.1.7. A chapel, in the main building has internal exposed wooden beams and a stained glass window. The main roof includes a number of gable fronts, and there are numerous dormer windows, with both pitched and flat roofs along the roof plane together with a series of tall brick chimneys.
- 1.1.8. The existing building is concealed from the road at Pembroke Park by dense trees/hedging.
- 1.1.9. The history of the building, which evolved in stages over many years, in the late 19th century and early 20th century, can be read in the roof-scape as well as the brick facades.
- 1.1.10. The site is given as 3.4ha (3,431.4 sq m).

2.0 Proposed Development

- 2.1.1. The application is for planning permission for a Build to Rent (BTR) residential development. The proposed development will consist of:
 - 1. Demolition of non-original extensions to St. Mary's Home and ancillary structures on site;
 - 2. Alterations to and change of use of the existing building (St. Mary's Home) from nursing home to BTR residential use, including internal and external alterations, elevational alterations, and the replacement of the existing roof structure providing an additional storey, to provide 23 no. BTR residential units (Block A), along with resident support facilities, and resident services and amenities located at ground floor level;
 - 3. Construction of a new part three and part four storey building to the north of and connected to the existing building, to provide 22 no. BTR residential units (Block B);
 - 4. Construction of a new three storey building to the east of the existing building, to provide for 16 no. BTR residential units (Block C);
 - 5. Construction of 3 no. new two storey BTR duplex units to the south of the existing building (Block D);

6. The proposed development will provide a total of 64 no. BTR residential apartment units comprising 19 no. studio apartments, 41 no. one bedroom apartments (including the 3 no. duplex units within Block D) and 4 no. two bedroom apartments;
7. The development will comprise a total gross floor area (GFA) of c. 4,302 sqm;
8. The development includes all associated site development works, car and bicycle parking spaces, solar panels at roof level, bin stores, bicycle store, plant, hard and soft landscaping, boundary treatments, widening of vehicular access from Pembroke Park, pedestrian access points from Clyde Lane and Pembroke Park, foul and surface water drainage, and all other ancillary works, including temporary site hoarding and marketing signage.

2.1.2. The application was accompanied by:

Documents:

Architectural Design Statement by Urban Agency

Architectural Heritage Impact Statement by Clare Hogan Conservation Architect

Planning Report by John Spain Associates

Appropriate Assessment Screening by Enviroguide Consulting

Mobility Management Plan by OCSC (O'Connor Sutton Cronin Multidisciplinary Engineers)

Site-specific Flood Risk Assessment by OCSC

Parking Strategy & Traffic Assessment by OCSC

Outline Construction Management Plan by OCSC

Outline Construction & Demolition Waste Management Plan by OCSC

Engineering Services Report by OCSC

Energy & Sustainability Report by OCSC

Operational Plan for Waste Management by AWN Consulting

Building Life Cycle Report by Aramark

Property Management Strategy Report by Aramark

Arboricultural Report by The Tree File Ltd

Landscape Plan by NMP Urban Agency

Archaeological Assessment by IAC Archaeology

Assessment of Daylight Levels by BPG3

Drawings:

Architectural drawings by Urban Agency

Engineering drawings by OCSC

Arboricultural drawings by The Tree File

Landscape Drawings by NMP & Partners Landscape Architects

2.1.3. The Architectural Design Statement includes:

St Mary's Home is a well preserved late Victorian building in the plain institutional style favoured during that period. Decorative details are largely confined to the entrance façade with occasional flourishes throughout the rest of the building. Extensions were added post 1901 and a plainer architectural style developed thereafter. Of most significant interest is its association with the prominent architects of the time - Thomas Newenham Deane and Son. Internally the significant extant features are to be found in the timber staircase and in the chapel with its ornate hood mouldings, detailed joinery and exposed rafters. The building is of some historical interest regarding its origins within the benevolent school system of the time but contributes little to its surrounding context as it is obscured behind dense shrubbery.

The permitted development proposal has been replaced with the current scheme, due to improved efficiency of design, a better unit mix and a superior provision of amenities.

The design process has focused on providing residential amenities, outdoor areas and sufficient communal and multi-functional spaces; ensuring that it is an attractive place to live.

The provision of a basement car park made the development unviable. The technical challenges and risks involved in building a new basement below the existing structure have proven to be unrealistic.

The number of lift cores for the quantum of apartments provided contributed to the economical non-viability of the development.

Both the access ramp to the basement and the footprint and form of the (former) permitted north-east extension, left very little useable open space for the development other than a small communal open space of 195m² to the south east.

The layout and massing of the permitted north-east extension and its proximity to St Conleth's caused overlooking and overshadowing conditions.

Illustrations provide comparison between the building height and buildings at Wellington Road, Wellington Park and Pembroke Park.

Numerous examples of repurposing historical buildings roofs into modern accommodation are illustrated. The two remaining internal interest features: timber staircase and chapel, will be retained.

In block B the residential units are organised as a series of overlapping duplexes, crossing the full depth of the building, to maximise dual aspects, natural light and cross ventilation. Balconies have been avoided to maintain simple and sober elevations, ensuring that the architectural expression is in keeping with the area.

Block C along Clyde Lane, is a 3 storey mews-like building. The existing stone wall is punctured to create individual access points.

The proposed south-facing mews duplexes along Ardoyne Lane align with and complete the existing Ardoyne mews houses. They are carefully designed to avoid overlooking onto Ardoyne Lane and the rear gardens of existing houses along Pembroke Park.

Materials are detailed and justified, and visualisations are provided.

Photomontages are provided from three points.

A schedule of accommodation is included.

2.1.4. The Architectural Heritage Impact Statement includes:

St Mary's Home is not a protected structure, however it is a building of heritage interest that makes a positive contribution to its context.

One of the most significant items of interest of St Mary's Home is that it was designed by the practice of Thomas Newenham Deane, one of the foremost architects of that time.

The two remaining internal significant features, the chapel and the timber staircase, will be retained.

Granite boundary walls that surround the building are erected in a coursed random rubble construction commonly seen in the surrounding gardens and mews lanes and the proposals will necessitate removal of sections of these walls.

It is proposed to remove the existing roof structure of St Mary's Home in order to construct an extension that will provide additional units that comply with statutory requirements. The architectural report accompanying this application includes many precedents for this approach in Dublin and also international examples. The architectural design is a contemporary take on pitched slate-covered roofs with dormer windows, without falling into the trap of pastiche style. The materials will be natural slate, with powder coated aluminium at penthouse level, which is set back from the external envelope. The present roof covering is in poor condition and the proliferation of dormer windows, a modern intervention.

There are improved amenity areas for the public, and this public realm seeks to provide a better setting to the streets bounding the block, while offering new routes through it.

The materiality of the proposed roof treatment reflects sensitivity to traditional materials, whilst the detailed architectural design is in a contemporary idiom and of its time.

The presence of the neighbouring St Conleth's College establishes a different scale and massing with primarily a twentieth and twenty first century architectural language. The design proposal responds to these varied contextual elements.

Conservation is the process of caring for buildings and places, and of managing change to them in such a way as to retain their character and special interest. This entails making decisions that are based on the nature, extent and level of a heritage asset's significance investigated to a proportionate degree. Sympathetic maintenance, adaptation and re-use, allows buildings of architectural heritage to

yield aesthetic, environmental and economic benefits. The creative challenge is to find appropriate ways to satisfy the requirements of these structures to be accessible, safe, durable and useful on the one hand, and to retain character and special interest on the other. As the new development proposal affects the setting of the building, detailed drawings and photomontages have been submitted by the architects to demonstrate the new context, and which illustrate the relationship between the new proposals and the heritage building.

2.1.5. Archaeological Assessment includes:

Whilst the development area has been subject to disturbance during the post medieval period, it is not clear how disturbance may have affected the potential archaeological resource. It is recommended that all ground disturbances associated with the proposed development are monitored by a suitably qualified archaeologist. If any features of archaeological potential are discovered during the course of the works, further archaeological mitigation may be required.

2.1.6. The Planning Report includes:

The application includes works within the surrounds of the existing adjacent mews house, no. 28A Clyde Lane, located in its own curtilage to the northeast of the subject site, bordering St Conleth's College to the north.

The existing news dwelling is located within its own boundary, with an access gate to Clyde Lane and a further gate in the boundary wall linking with St Mary's Home curtilage. The house is two storeys in height with a pitched roof, and a wooden-framed porch structure on the front/southern elevation. The mews house was formerly used by staff of the nursing home. The mews has now been transferred to the ownership of the adjoining school.

The proposed development includes works to the south of the existing mews house, part of the garden and its boundary falls within the application site, to include the removal of an existing wall, and the clearance of landscape treatment to provide for the proposed new building on this part of the site.

Re-purposing of this mews for use as ancillary space by St Conleth's College was recently permitted. This permission also provides for works to the existing structure, to reposition the entrance towards the school premises.

The main existing building on the site is to be re-purposed and renovated. Due to the level of intervention necessary for residential use, the fact that the floor joists span to a central corridor that must be removed to implement an appropriate residential layout, and the acoustic and fire safety requirements of modern residential accommodation, it is intended to replace the existing floorplates within the building, including the ground floor, with new modern floorplates to meet contemporary requirements.

The Dublin City Council Height Strategy sets out a general building height of 16m for residential development in the outer city. The proposed development does not exceed 4 storeys and the maximum height proposed is 14.3m.

2.1.7. The Arboricultural Report includes, as table 1, details the 28 trees on site, all of which are to be removed to make way for the proposed development, many are in 'good' condition.

2.1.8. The Sunlight and Daylight Assessment includes:

Modelling was carried out for neighbouring properties, of existing windows (for daylight and sunlight), and of outdoor amenity spaces for sunlight, to show the existing situation and the impact of the proposed development. Modelling was carried out for the windows of the proposed development (daylight and sunlight) and for sunlight to proposed amenity spaces.

The applicant refers to planning guidelines, and the BRE guidelines themselves, which address the difficulty of achieving the BRE guideline standards. In some circumstances, in constrained urban situations, balancing assessment of daylight / sunlight loss, against the desirability of achieving wider planning objectives, such as securing comprehensive urban regeneration and or an effective urban design and streetscape solution, is advocated.

For daylight/ skylight vertical sky component (VSC) is used, this they call primary testing. If the VSC measured is both less than 27%, and 0.8 times its former value, the occupants will notice a reduction in the amount of skylight.

Secondary testing they state is used when departures from the BRE's conventional targets for skylight access are identified, to assess significance. In this secondary testing, average daylight factor (ADF), is used to provide an accurate indication of

the levels of daylight amenity which would be provided within the associated interior space.

ADF assesses daylight within a room and allows consideration of factors including the reflectance of materials. The acceptability of daylight amenity within new residences is assessed with respect to the minimum ADF targets recommended in BS 8206: minimum ADF's of 2%, 1.5% and 1% are recommended for kitchens, living rooms and bedrooms, respectively, per BS2206-02.

Sunlight – Annual probable sunlight hours (APSH) measures the total number of hours in the year that the sun is typically expected to shine on unobstructed ground, allowing for average levels of cloudiness for the location in question.

Impact on Existing Development

Assessment points – a careful appraisal of the neighbouring environment identified a number of existing properties which could potentially experience some form of altered lighting as a result of the proposed development. These properties include a number of residences located on Clyde Road and Pembroke Park. St Conleth's College, located to the north of the development site, has also been considered. Windows on the southern elevation of St Mary's Lodge have been omitted from the assessment as it is understood that they are to be blocked up in the future, permission granted under DCC Reg Ref 2828/19.

Daylight:

A total of 59 points were assessed, at the locations shown on figures 1 to 6, (every side of the proposed development). The results are shown in table 1. The interpretation of the results states that VSC shortfalls, predicted for points 10, 13, 14, 15 & 16, relate to windows which serve the main hall in St Conleth's College, which is served by additional windows on the north elevation. A fairer representation of the overall impact is obtained by averaging the VSC for all windows which serve a given space. When this is done the average VSC is found to satisfy BRE recommendations. Shortfalls predicted for points 36 & 37 relate to windows which serve a double height living room within No. 2 Ardoyne Mews. This space is served by many windows, some of which are large. The average VSC for all windows which serve this space is found to satisfy BRE recommendations. The skylight access would change only very slightly as a consequence of the proposed development. For

windows 11 & 12, which serve an Art Room on the first floor of St Conleth's College, secondary testing was carried out. They conclude that it would fall within tolerable bounds, based on its intermittent use; while increased reliance on artificial light can be anticipated for the rear of the room relatively high levels of daylight amenity would remain available to the front; the room falls short of recommended levels in both the existing and proposed scenarios, mainly because the room is served by two relatively small windows on the western elevation. If desired, at some point in the future, it would be relatively straightforward to introduce new windows in the southern wall of this room. The reduction in light is modest.

Sunlight:

This was assessed using the same 59 points, of which all but 1 were found to satisfy the BRE guide. In that case, window 36, (the double height living room within No. 2 Ardoyne Mews) alternate windows serve the space, which would retain acceptable levels of sunlight access. Table 3, which sets out the results, shows that in many cases results were not obtained, since testing is only applicable to those facing within 90° of due south.

Sunlight to amenity space:

It is stated that a survey of the neighbouring environment identified a sample of nine neighbouring outdoor recreation spaces, where altered sunlight levels could potentially register, shown in Figure 9. The results are given in table 5 and are shown in figures 10 & 11. The report states that full compliance with BRE advisory minimums has been demonstrated for all gardens assessed.

Amenity of Proposed Development

Daylight

ADF measures the average daylight in a room, with reference to the unobstructed external light, representing the result as a percentage of the outdoor light from a standard overcast sky. Per BS 8206-02, where an open plan space includes both a living room and a kitchen, the room should be assessed against the higher of the two thresholds.

A total of 63 rooms were considered. The results are given in table 7 and shown in Figures 12 – 15. Internal skylight amenity would be available to 53 of the 63 rooms,

which they use to estimate that 88% of all habitable rooms would meet or exceed the advisory minimums in BS 8206. If the ADF target of 1.5% instead of 2% were used for living rooms with kitchens, 95% of all rooms would meet targets. They state that reasonable levels of internal skylight would remain available in most cases of departures from advisory minimums. Rooms 5, 7, 8, 9 & 47 would achieve 1.5% associated with living room use. In 29, 30 & 33 it is predicted that adequate levels of natural light would be provided to significant areas proximate to external windows.

They refer to the constraints of the site and the approach of Dublin City Council and the Board in similar situations.

Sunlight:

They point out that for overcast conditions prevailing in Ireland, basic daylighting within interior spaces is provided by diffuse light from the sky, which, while not as bright as direct sunlight, is always available during daytime hours; and that sunlight is of secondary importance. They note that the BRE guide recognises that it is not realistic for every unit within an apartment to achieve full compliance with sunlight standards.

A dwelling or non-domestic building which has a particular requirement for sunlight, will appear reasonably sunlit provided:

- At least one main window faces within 90° of due south.
- The centre of at least one window to a main living room can receive 25% of annual probable sunlight hours, including at least 5% of annual probable sunlight hours in winter months, between 21 September and 21 March.

BRE advocates flexibility, as the assessment criteria are often challenging to meet, particularly in urban locations where neighbouring buildings and site orientation can restrict access to direct sunlight. BS 8206 states:

The degree of satisfaction is related to the expectation of sunlight. If a room is necessarily north facing or if the building is in a densely built urban area, the absence of sunlight is more acceptable than when its exclusion seems arbitrary.

The assessment states that, further to the BRE advice, in cases where it is not possible to demonstrate full compliance with sunlight targets at living room windows,

it is possible to conclude that occupants would still maintain access to sufficient sunlight in scenarios where the targets can be satisfied at a window serving an alternative room within the dwelling.

The results for annual sunlight are given in tables 10 & 11 and shown in Figures 16 – 19. The results for winter sunlight are given in tables 12 & 13 and shown in Figures 20 – 23. A strict interpretation of the BRE guidelines would show an overall compliance rate, initially of 68%, and a winter compliance rate of 71%. The site constraints are referred to, stating that it important to extend a significant amount of leniency to the departures arising, particularly for the north facing units, which benefit from attractive views over the Woodland Garden.

The Board's approach in a similar situation is referred to.

The strict interpretation assumes that the levels of sunlight provided within a unit are linked exclusively to the sunlight levels which register within the main living room. It is reasonable to propose that other rooms should be accounted for. When sunlight access is assessed with regard to the number of probable sunlight hours within both the main living room and the other habitable rooms within a unit, a higher proportion of units are found to satisfy the minimum 25% APSH target. In such case 92% of units meet or exceed the annual target, and 87% the winter target.

Sunlight amenity to proposed recreation areas:

Accepting that a degree of flexibility and discretion must be used in the assessment of sunlight adequacy, the BRE proposes that a garden or amenity area will appear adequately sunlit throughout the year if at least half of it can receive at least two hours of sunlight on 21 March.

Two outdoor recreation spaces have been considered: a Woodland Garden to the north of the site (340m²) and a Formal Lawn & Sculpture Garden to the south (590m²), considered to be the principal outdoor communal area.

The recommendations of the BRE guide would be satisfied for the Formal Lawn & Sculpture Garden but not for the Woodland Garden.

The communal area requirements are satisfied with the Formal Lawn & Sculpture Garden. The total area capable of receiving 2 hours of direct sunlight on 21 March is predicted to be 497m², as given in table 14 and shown in figure 25.

Conclusion:

The report concludes that the proposed development strikes a reasonable balance between the need to provide a welcome quantum of new housing in this neighbourhood, the need to safeguard the future of the historic building and the need to provide future occupants and neighbouring residents with access to reasonable levels of daylight amenity.

2.1.9. The Site-specific Flood Risk Assessment includes:

The site is located approx. 560m from the River Dodder. The site is outside the 0.1% annual exceedance probability (AEP) fluvial flood event, and is therefore located within flood zone C for fluvial flooding. The Dodder CFRAMS fluvial flood extent map indicates that the flood water level closest to the site is 5.63m AOD for the 1% event. The existing ground level on the site varies between +6.4mAOD and +7.2mAOD.

The proposed residential units will be provided at ground level and above, at FFLs of 6.6mAOD thus providing a freeboard of 0.97m above the 1% AEP flood water level.

Re. tidal flood risk - for new-build development in this area Dublin City Council (DCC) recommends a minimum habitable floor level of 4.0mAOD.

Re. pluvial flooding the site is located at a low point on Pembroke Park. The site falls from Pembroke Park to Clyde Lane and ground levels continue to fall eastwards along Clyde Lane. This corresponds with the original course of the Swan River, which has been diverted, culverted and replaced by the public combined sewer.

In extreme rainfall events that exceed the capacity of the local road drainage system, or in instances where the local road drainage system fails, surface water is likely to collect at the low point on Pembroke Park. Proposed buildings connecting with the existing building will be provided with the same ffl as the existing.

The lowest back-of-footpath level along Pembroke Park site frontage is 7.65mAOD. it is proposed to maintain the overland flow route through the site by providing a corridor where ground levels are lower than adjacent areas.

Attenuation is proposed as part of the surface water sewer network. This ensures that pluvial flooding is not considered to be a significant risk to the proposed development or as a result of the proposed development.

2.1.10. The Parking Strategy & Traffic Assessment includes:

In the permitted development of 24 apartments, the basement car parking, while retaining the existing structure presented a considerable challenge. It would have required extensive excavation directly adjacent the structure and its associated foundations, to facilitate two levels of car parking, as well as an element of tunnelling. It rendered the development unviable.

For comparison purposes, a comparable site has been selected in a similarly accessible location which consists solely of apartments. This development contains a total of 192 apartments, the majority are rental, ranging in size from 2-5 bedroom units. The underground car park facilitates car ownership, but only 14 of the 304 occupants (less than 5%), commute by car. The likely demand for car usage, and the need for car ownership, will be negligible.

Design Standards for new apartments, Guidelines 2020 Sec 4 - car free development is permissible and if developed, must be fully communicated as part of subsequent apartment sales and marketing purposes.

The development has incorporated a series of hard and soft proposals to facilitate the parking arrangements including provision of dedicated car club vehicles, extensive cycle parking provision, implementation of a Mobility Management Plan and a communications policy. The movement of delivery and servicing vehicles has been accommodated within the site footprint as appropriate. The traffic impact has been deemed negligible in accordance with DCC and TII guidance.

2.1.11. Mobility Management Plan includes:

Public transport options are outlined.

Existing cycle facilities in the vicinity of the site are outlined. Proposals for future cycle network improvements are outlined.

Walking distances to centres, facilities and services are outlined.

Car parking will be restricted on the site. Two car club spaces will be provided to facilitate less frequent once off trips but will not facilitate commuting by car. These spaces will be available to book by residents through a management system. Two set down/servicing spaces will be provided to ensure deliveries and set-downs can safely be accommodated.

Recent advancements in technology provide opportunities to encourage positive modal shift. The NTA Journey Planner, available as a downloadable app, provides a comprehensive list of travel options from any origin/destination point in the country. Each of the major public transport providers, including Dublin Bus, Bus Éireann and Irish Rail, have their own dedicated downloadable app. Realtime Ireland is an app which provides real time arrival and departure listings for a range of public travel options from major rail stations to individual stops, which links with the NTA Journey Planner.

2.1.12. The Engineering Services Report includes:

Surface Water Drainage – all surface water runoff on the existing site discharges to the combined sewer manhole at Pembroke Park. It is proposed to combine the surface water and wastewater drainage networks which will serve the proposed development, and provide connections to the adjacent combined sewer on Pembroke Road. A capped 225mm surface water sewer will be provided to the site boundary, as per DCC requirements, to allow for the potential connection to any future surface water sewer. Attenuation storage in two cellular systems for a total of 53m³ is to be provided on site. An attenuation system is to be provided at surface level in order to temporarily store excessive rainfall runoff, during significant rainfall events, due to the restricted discharge rates prior to discharge to the public network. For this a raingarden is proposed in front of the buildings.

Wastewater – A new 225mm connection is to be provided to the existing combined sewer infrastructure at Pembroke Park. Confirmation of feasibility has been received from Irish Water.

Water Supply – it is proposed to provide a 100mm high-density polyethylene connection to the existing 4" uPVC 1965 water main on Pembroke Park. Confirmation of feasibility has been received from Irish Water.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority (PA) decided to grant permission subject to 18 conditions, including:

2. Development Contribution.
3. A cash deposit or a bond to secure the satisfactory maintenance, completion and any reinstatement of services/infrastructure currently in the charge of Dublin City Council, and to secure the satisfactory completion of services until taken in charge by a Management Company or by the Local Authority.
4. Details, including samples, of the materials, colours and textures of all the external finishes to be agreed.
5. No additional development to take place above roof parapet level.
8. The development to be for build to rent units operated in accordance with the definition of Build to Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2020, and to be used for long term rentals only.
9. A covenant or legal agreement confirming, BTR for a minimum term of 15 years.
10. Prior to the expiration of the 15 year period, the owner to submit ownership details and management structures proposed for the continued operation of the entire development as a Build to Rent scheme. Any proposed amendment or deviation from the Build to Rent model to be subject to a separate application.
11. Re. compliance with the landscaping scheme.
12. Re. compliance with the requirements of the Roads and Traffic Division.
- 13 Re. compliance with the requirements of the Drainage Division.
14. Re. compliance with the requirements of the Environmental Health Division:
15. Adjoining streets to be kept clear of debris, soil and other material.
16. Proposals for a naming and numbering scheme to be agreed.
17. Agreement under Section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000.
18. Noise Control during Construction.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There are two planning reports on the file, the first, 24th June 2021, recommending a further information request, which issued, includes:

- Referring to the development plan QH6, QH7, QH8, QH18, QH19, QH22, Chapter 16 development standards, including 16.10.1 & SPPR7.
- The re-purposed building, block A, will provide 23 units with 15 studio units, 7 x 1 bed and 1 x 2 bed. This differs from the previous scheme in that the units are significantly reduced in size and more units provided. The previous proposal had 9 units: 2 x 1 bed, 5 x 2 bed with study, 1 x 2 bed and 1 x 3 bed with study.
- The planning authority has an issue with the extension at roof level: the glazing followed by the heavy dark roof structure with dormers which appear to dominate.
- Block B is stepped forward by 9m from block A's established building line and will be directly linked to it. Part 3 storey and part 4 storey, it will contain 22 units: 2 x studio, 3 x 2 bed and 18 x 1 bed.
- The stepping forward of this block is forward of St Conleth's new extension.
- Block C on Clyde Lane, with individual access to Clyde Lane, and a further entry point, provides general access to the scheme. The 3 storey block has duplexes at ground and first floor, and second floor units accessed from an external walkway.
- Block D is a block of 3 x 1 bed duplexes, each with a landscaped garden at ground level accessed from the formal lawn, and designed to maintain the privacy of properties to the south. To the west is a block providing indoor bicycle and bin store storage, and plant room. The residential units have high level windows with aluminium screens, and screen walls and perforated brick walls are used to relieve the elevation to Ardoyne Lane. Tall screens contain the first floor terraces.
- Further information is recommended.

3.2.2. Other Technical Reports

Engineering Department – Drainage Division, 24/05/2021 – conditions.

Transportation Planning Division, 16th June 2021 – 10 mins from Donnybrook village and 20 mins from Stephen's Green.

There are cycle lanes both north and south-bound along Leeson St Upper. Public transport options within walking distance include existing high-frequency, peak-hours bus service on Leeson St Upper / Morehampton Rd (Stillorgan QBC), and Merrion Rd (Rock Road QBC). Both roads form part of the Bus Connect proposals which would see increased frequency in peak hours. The site is equidistance from both the Ranelagh Luas Station and the Landsdown Dart Station, at approximately 1.6km east and west.

A front courtyard, with parking drop-off and loading bay arrangements, is proposed. Access is to be widened from 3.5m to 7m; no gate is shown.

A separate pedestrian entrance is proposed on Pembroke Park to the north of the vehicular access. The 4 units fronting Clyde Lane will have direct pedestrian access from the lane.

Pedestrian connectivity east towards Ballsbridge and Dart Station is welcomed.

The proposed loading bay and the set down spaces within the site are welcomed. So are the 3 cargo bike spaces located adjacent to the front courtyard, as these will also benefit the service strategy for the proposed development. A parcel drop unit is noted adjacent to the front courtyard. There is sufficient temporary storage within the car park / front courtyard on collection days. Waste collection is proposed to take place from Pembroke Park.

Parking – 69 cycle spaces in a storage unit adjacent to block D, a mixture of single tier and two tier. A further 30 spaces are provided for individual units, in bike parking boxes within the curtilage of the unit. A further 28 Sheffield stands are provided for visitors, adjacent to the front courtyard, to the rear of block A. Proposed provision is acceptable.

2 car share spaces – GoCar, and 2 service / set down spaces. Accessible drop-off can be facilitated within the service / set-down spaces. Having regard to the scale and type of units proposed, the connectivity of the site, the active mode provision (shared use) the service and drop-off facilities as well as measures outlined within the submitted Parking Strategy & Traffic Assessment and the MMP, the proposed

car parking provision is considered acceptable in this instance. Electrical charging facilities should be provided for the two car share spaces.

Recommending conditions.

3.3. Further Information

3.3.1. A further information request issued 28th January 2021:

1. The Planning Authority has serious concerns regarding the extension and alterations at roof level in Block A, in respect of the glazing, followed by the heavy dark roof structure with dormers which appear overly dominant and visually obtrusive, the applicant is therefore requested to review this aspect of the design.
2. The Planning Authority has serious concerns regarding the residential amenity of some of the residential units within the scheme and has a particular concern regarding the single aspect duplex units in block C which directly face the gable end of block A,

in relation to separation distances and access to natural light. The applicant is therefore requested to review this aspect of the design.

3. The applicant is requested to review the proposal so that all of the units can have access to their own individual private open space and to show that the ground floor units have defensible planting in place.

4. The Planning Authority has serious concerns regarding the failure to comply with the Average Daylight Factor (ADF) and the failure to comply with Annual Sunlight Hours (APSH) for some of the units within the development. The applicant is requested to review this aspect of the development so that all units are fully compliance with BRE guidelines in respect of this.

5. The applicant is requested to consider amending the second floor plan in block C, to allow for the living accommodation to have direct access to the south west facing terraces with the bedrooms moved to either end facing in a north east orientation.

6. The applicant is requested to re-consider the proposed mix of units within the development as there is an over provision of studio and 1 bed units. This is of

particular concern as it increases the intensification of the site and the implications for the wider area.

7. The applicant is requested to review the proposal for single aspect north facing units given that the existing permission i.e. Ref. 2424/19 did not have any.

3.4. Further Information Response

3.4.1. The further information response, 17th November 2021, was accompanied by:

Documents:

Planning Response by John Spain Associates

Shadowing Response by BPG3

Market Demand Response by Cushman & Wakefield

Drawing Issue Sheet by NMP & Partners Landscape Architects

Drawing Issue Sheet by Urban Agency

Daylight Report 1 of 2 Daylight Impact Report by BPG3

Daylight Report 2 of 2 Assessment of Daylight Levels by BPG3

Design Response by Urban Agency

Drawings:

Architectural drawings by Urban Agency

Landscape Drawings by NMP & Partners Landscape Architects

3.4.2. The Design Response includes:

In response to item 1, the design team evaluated a variety of solutions, which they illustrate; and outline reasons for the selected option.

In response to item 2, they point out that block C is not single aspect. They show how the design avoids directly opposing windows between block C and block A: the differences in finished floor level between the blocks and the nature of the tall narrow windows in block A. They show where it is proposed to use obscured glass. The level of separation is similar to that permitted. Provision of planting will further break up views.

In response to item 3, this was discussed with the planning authority prior to submitting the response.

They point out that SPPR8 of the 2020 guidelines allows for alternative / compensatory measures in place of private open space provision. The inclusion of balconies would compromise the intent and architectural concept, which seeks to provide an appropriate design response to the surrounding area, particularly the frontage with Pembroke Park.

The introduction of balconies to all frontages would detract from the architectural quality of the scheme and on the existing buildings would have a significant impact on the existing fabric.

The provision of communal open space is 279% of that required and there is a high standard of internal communal amenities.

Amendments provide private open space to serve units in block A, facing onto the woodland garden.

Strengthening the defensible planting for units facing the formal lawn, is shown.

Glass Juliette balconies added to each Living/Dining/Kitchen area on the front and back elevation of block A, creates a link to the outdoors.

In response to item 4, they show alterations to block C, at ground and first floor, which provide for increase in daylight access; and alterations to block A, at third floor, which provide for increase in daylight access.

In response to item 5, they demonstrate that moving the Kitchen/Living/Dining room as requested would significantly compromise the quality of the layout.

In response to item 6, they refer to the attached response from Cushman & Wakefield regarding the demand for and availability of unit types in the area. The site is located in an area which is one of the best served in the city/state, in terms of facilities, infrastructure and amenities to support additional residential development.

A section of the report details the benefits of the proposed scheme versus the permitted, such as the quantity and quality of the communal open space; more sustainable transport proposals; fewer alterations to the historic building; a more sympathetic architectural response to the surrounding area; less impact from overlooking on the school; and the provision of communal amenity spaces.

3.4.3. The Planning Response includes:

Amendments to the scheme are listed, including that the roof of block A has been comprehensively redesigned, including revised fenestration, roof profile, materiality and design.

In relation to item 4, they refer to the amended reports on sunlight/daylight.

Addition of a new window to the gable of Block C, at ground floor level, to provide additional light for unit C004.

Increase in the floor to ceiling height, window extent and dimensions of the ground floor units within Block C, to increase light access.

Increase in the size of window to bedroom in the north western elevation of block C at first floor level, to improve light access for unit C005.

Revisions of window arrangements and increased window areas to units C101 and C102 in Block C at first floor level, to improve light access.

Addition of a frosted window in the southern gable of block C at first floor level serving unit C102.

Revisions to window arrangements and increased window area to units C101 and C106 in Block C at second floor level, to improve light access.

Addition of skylights to the roof of block A, to improve the sunlight and daylight access to units at third floor.

3.4.4. The Market Demand Response includes:

There is a significant requirement for one bedroom units in Dublin City, with insufficient supply to meet this demand. Ireland's population continues to expand. This increase causes a natural demand for housing of all types, including rental accommodation, and in conjunction with the decline in the average household size, places greater pressure on housing.

The existing housing in the area comprises mostly old and large properties, which contrasts with the requirements of the growing population in the area. For the ED of Pembroke, 45% of private households in 2016 were in a flat/apartment, 28% of households were in units built pre 1919 and 18% in units built between 1919 and 1960 (higher proportions of older houses than

the state/city). Appendix 1 of the report gives details from the 2016 census. Households by year the house was built, and households by number of rooms, in actual numbers and in percentages, for Pembroke ED, Dublin, and Ireland; and a breakdown of household type for Pembroke ED (eg. one person, married couple etc).

3.4.5. The Daylight Report 1 of 2 Assessment of Daylight Levels includes:

The presentation of the results for the adjoining development is slightly different to the earlier report. The results, for 59 windows associated with 41 rooms, show that in almost all cases, 40 of 41 rooms, skylight would comply with the guidelines. The singular instance of non-compliance is considered to fall within tolerable bounds. (The room identified as not complying, is room 2 – the art room in St Conleth's College. The impact falls at the lower end of the scale and is therefore assumed to fall within tolerable bounds.) Sunlight to neighbouring accommodation for annual and winter sunlight - all rooms would receive levels of sunlight which exceed advisory minimums. Re. sunlight to outdoor areas - all outdoor areas would receive levels of solar access which exceed advisory minimums and reasonable sunlight would remain available.

3.4.6. The Daylight Report 2 of 2 Assessment of Daylight Levels, proposed development, includes:

The report includes:

All ten of the rooms which are predicted to fall short of advisory minimums (at level 00 rooms 13, 14, 15, 24 & 25; and at level 02 rooms 15, 16, 18, 19 & 20), are located within and subject to the constraints of the existing historical building. The design of the development seeks to minimise impact on the facades of this existing building, which are to be retained.

They set out a number of compensating factors to be considered when assessing the significance of the departures identified in the study.

It is important in some instances to offer a professional opinion regarding significance/meaning.

3.4.7. The second planning report, 14th December 2021 – includes:

Re. item 1 - the revised design which includes the revised roof level design to block A is acceptable.

Re. item 2 – the response, including the clarification of the dual aspect nature of the duplex units in block C, the inclusion of obscure glazing or in other cases larger windows and the increase in floor to ceiling height for the ground floor units facing block A, is considered acceptable.

Re. item 3 – the response, to include private open spaces to serve the units in Block A, the improvement in the planted boundaries and inclusion of Juliet balconies to the facades of block B, is considered acceptable. The development includes the reuse of a historic structure in the centre of the site, is providing a large amount of high quality communal open space to compensate for the lack of private open space. In this instance the lack of private open space for some units, is considered acceptable. This will not be seen as creating a precedent.

Re. item 4 – re. adjoining properties – the report confirms that the development demonstrates substantial compliance with the BRE guidelines, with the single instance where full compliance is not achieved on skylight access for a nearby room remaining within tolerable bounds. Full compliance was noted in relation to neighbouring sunlight access and light to private open spaces.

In relation to the proposed development, they quote the report: ‘on the basis of the improvements now reflected in the scheme in relation to sunlight and daylight access the architectural changes incorporated and the significant additional detailed and iterative assessment undertaken, it is respectfully submitted that the proposed development performs well in terms of sunlight and daylight amenity, while also having no significant impact on neighbouring properties’. The response is acceptable.

Re. item 5 – units cannot be altered. The response is acceptable.

Re. item 6 – response demonstrates the appropriateness of the mix, with reference to the prevailing demographic trends, housing need, market demand in the area and existing housing stock in the vicinity. Section 2.22 of the guidelines allows for a greater degree of flexibility in unit mix for small urban infill schemes. Mix is acceptable, but should not be considered a precedent.

Re. item 7 – units are not north facing. The response is acceptable.

Recommending permission, which issued.

3.5. Third Party Observations

- 3.5.1. Third party observations on the file have been read and noted. Issues raised have been raised in the grounds of appeal and/or the observation on the appeals.

4.0 Planning History

305005, PA Reg Ref 2424/19, in appeals against the planning authority's decision to grant (3rd part v grant, 1st party v conditions), permission was granted for:

Demolition of non-original extensions to St Mary's Home and ancillary structures on site;

Alterations to and change of use of the existing St Mary's Home (nursing home) to residential use, including internal and external alterations, elevational alterations, provision of terraces at second floor level and balconies at first floor level, to provide 9 no residential units;

Construction of new 2, 3 and 4 storey structures to the north and east of the existing St Mary's Home, including balconies and private open space, to provide 15 no residential units; (block B is 6.877m from the roadside boundary at its closest point).

The proposed development will provide a total of 24 no residential apartment units comprising of 3 no 1 bed apartments, 16 no 2 bed apartments, and 5 no 3 bed apartments;

Provision of a basement level to accommodate car parking (25 no spaces including car stacker system), bin storage areas, plant, and service cores;

2 No. accessible parking spaces are provided at ground floor level along with cycle parking (46 no spaces);

all associated site development works, solar panels at roof level, bin store, hard and soft landscaping, boundary treatments, widening of vehicular access from Pembroke Park, pedestrian access from Clyde Lane and Pembroke Park, foul and surface

water drainage, and all other ancillary works, including temporary site hoarding and marketing signage.

Condition no. 2 is referred to in the current appeal, this was a condition in the PA's decision and included as a condition by the Board.

2 The development shall be revised as follows: (a) The third floor of Block B shall be omitted from the scheme. (b) The terraces at roof level in the original building shall be reduced in width to a maximum of five metres. (c) Privacy screens shall be provided on the southern side of the Clyde Lane block. Revised plans, drawings and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development and such works shall be fully implemented prior to occupation of the buildings.

Reason: In the interest of visual amenity and in the interest of residential amenity.

4 Prior to commencement of development, the developer shall provide the following information to the planning authority for their written agreement

i. The detailed design of the 1.5 metre ground level opening in the front boundary wall to accommodate an overland flow route.

ii. Revised drawings showing the width of the permitted opening in the boundary wall along Clyde Lane limited to 1.5 metres.

iii. 1:20 details of all proposed railings and gates.

iv. Full drawing survey including photographic record of all existing boundary walls. Detailed schedules of any repair and reinstatement works that are required to the walls should be fully detailed. A method statement for the raking out and repointing of the stonework and associated repair details are to be provided. Details of the historic stone coursing, sizes of stone as well as mortar composition and colour shall be provided.

v. Full details of all proposed new elements, such as toothing-in and repair work that shall be required. All new elements shall match the historic walls.

Reason: In the interest of preserving the architectural integrity and heritage value of the retained structures.

2818/19, planning permission granted for the change of use of 28A Clyde Lane from residential to ancillary educational use associated with St Conleth's College, and

including works to the building to reposition the entrance towards the school premises to the north.

ABP 311453, PA Reg Ref 3081/21, in an appeal against the planning authority's decision to grant, permission was granted for demolition of existing buildings (21 square metres), construction of a three-storey extension incorporating existing coach house with frontage onto Clyde Lane, associated works and internal modifications.

2524/20, planning permission refused for demolition of 129 sqm of existing buildings. New 712 sq m development of school buildings, including a three storey element within internal courtyard (36 sq m), associated works and internal modifications.

5.0 Policy and Guidelines

5.1. National Policy / Guidance

5.2. Project Ireland 2040 – National Planning Framework

The Government's draft long-term strategic planning framework will guide national, regional and local planning and investment decisions over the next 25 years, includes emphasis on compact development.

It includes 12 National Policy Objectives including Objective 11 - In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria enabling alternative solutions that seek to achieve well-designed high quality and safe outcomes in order to achieve targeted growth and that protect the environment. Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages. Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 seeks to increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.3. Sustainable Residential Development in Urban Areas, 2009

Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities. Department of Environment, Heritage and Local Government, May 2009.

Presented together with an accompanying best practice Design Manual. The objective is to produce high quality sustainable developments: quality homes and neighbourhoods, places where people actually want to live, to work and to raise families, and places that work – and will continue to work - and not just for us, but for our children and for our children’s children.

5.4. Flood Risk Management

The Planning System and Flood Risk Management (including the associated ‘Technical Appendices’) Dept Environment Heritage and Local Government November 2009.

These guidelines require the planning system at national, regional and local levels to: avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere; adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk; and incorporate flood risk assessment into the process of making decisions on planning applications and planning appeals.

5.5. Design Standards for New Apartments 2018

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities – Department of Housing Planning and Local Government March 2018.

Further to the national planning framework it is noted that a move towards a much greater level of apartment living is essential in ensuring our major urban areas develop sustainably rather than sprawling inexorably outwards. The document

provides guidance in this regard. It has been updated as Design Standards for New Apartments 2020.

5.6. **Design Standards for New Apartments 2020**

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities – Department of Housing Planning and Local Government March 2020.

Where single aspect apartments are provided, the number of south facing units should be maximised, with west or east facing single aspect units also being acceptable. Living spaces in apartments should provide for direct sunlight for some part of the day. North facing single aspect apartments may be considered, where overlooking a significant amenity such as a public park, garden or formal space, or a water body or some other amenity feature. Particular care is needed where windows are located on lower floors that may be overshadowed by adjoining buildings.

Where an applicant cannot fully meet all of the requirements of the daylight provisions, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting taking account of its assessment of specific. This may arise due to a design constraints associated with the site or location 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.

Development Plans should provide for flexibility in respect of dwelling mix in small-scale building refurbishment and urban infill development schemes:

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 minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

These locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment

locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.

BTR

Build to rent (BTR) developments are specifically provided for. Specific Planning Policy Requirement (SPPR) 7 provides for BTR to be included in notices and that proposals should include supporting communal and recreational amenities.

SPPR 8 provides that in BTR schemes there should be no restrictions on dwelling mix; there should be flexibility in the provision of storage and private amenity space in individual units and in the provision of communal amenity space (compensatory communal and recreational amenities to be provided); there should be a default of minimal parking; there should be no requirement for 10% of units to exceed the minimum floor area; and the requirement of a maximum of 12 units per floor, per core, should not apply.

The principal purpose of issuing this technical update to the Guidelines is to include a specific planning policy requirement (SPPR 9) for a presumption against the granting of planning permission for co-living development. Changes to the 2018 version of the guidelines, solely relate to the 'Shared Accommodation' (Co-living).

5.7. Building Height Guidelines

Urban Development and Building Height Guidelines, Department of Housing Planning and Local Government, December 2018.

To put into practice key National Policy Objectives contained in the National Planning Framework to secure better and more compact forms of future development. It refers to consolidation and densification in meeting our accommodation needs into the future and the need to facilitate well located and taller buildings, meeting the highest architectural and planning standards in urban centres, by offering a more responsive policy and regulatory framework for planning the growth and development of our cities and towns upwards, rather than ever outwards.

5.8. BRE

Building Research Establishment guide 'Site Layout Planning for Daylight and Sunlight'. This British guidance document is frequently referred to in Irish publications. It includes:

Chapter 2 referring to daylight:

Ways of measuring vertical sky component (VSC) which is the ratio of direct sky illuminance falling on the vertical wall at a reference point (centre of a window), to the simultaneous horizontal illuminance under an unobstructed sky (such as if the building stood in an empty field giving a max. potential value of 40%); measuring daylight penetration within a room, average daylight factor (ADF) includes factors such as reflectance, window size and height.

Living rooms and kitchens need more daylight than bedrooms.

BS 8206-2 Code of Practice for daylighting is quoted with an ADF of 5% for a well daylit space and 2% for a partly daylit space, and minimum values of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. With a higher ADF, indoor daylight will be sufficient for most of the year, although above 6% summertime overheating may become a problem.

VSC

VSC is used to measure obstruction of light to existing buildings. Summarised in 2.2.21 as:

If any part of a new building or extension, measured a vertical section perpendicular to the main window wall of an existing building, from the centre of the lowest window, subtends an angle of more than 25° to the horizontal, then the diffuse daylighting of the existing building may be adversely affected. This will be the case if either:

- the VSC measured at the centre on an existing main window is less than 27%, and less than 0.8 times its former value.
- the area of the working plane in a room which can receive direct sunlight is reduced to less than 0.8 times its former value.

Chapter 3 refers to Sunlight:

3.1.10 refers to the importance of sunlight to room interiors, and the use of measurements for annual probable sunlight hours (APSH) in this regard.

3.2.3 to assess loss of sunlight to an existing building it is suggested that all main living rooms of dwellings, and conservatories, should be checked if they have a window facing within 90° of due south. Kitchens and bedrooms are less important, although care should be taken not to block too much sun. Non-domestic buildings and spaces which are deemed to have a special requirement for sunlight should be checked; they will normally face within 90° of due south anyway.

3.2.11 states that:

If a living room of an existing dwelling has a main window facing within 90° of due south, and any part of a new development subtends an angle of more than 25° to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected. This will be the case if the centre of the window:

- Receives less than 25% of annual probable sunlight between 21 September and 21 March or less than 5% of annual probable sunlight hours between 21 September and 21 March and
- Receives less than 0.8 times its former sunlight hours during either period and
- Has a reduction in sunlight received over the whole year greater than 4% of annual probable sunlight hours.

3.3.17 states that:

It is recommended that for it to appear adequately sunlit throughout the year at least half of a garden or amenity area should receive at least two hours of sunlight on 21 March. If as a result of new development an existing garden or amenity area does not meet the above, and the area that can receive two hours of sun on 21 March is less than 0.8 times its former value, then the loss of sunlight is likely to be noticeable. If a detailed calculation cannot be carried out, it is recommended that the centre of the area should receive at least two hours of sunlight on 21 March.

5.9. Development Plan

5.9.1. The Dublin City Development Plan 2016-2022 is the operative plan. Relevant provisions include:

Land-Use Zoning Objective – the site is zoned Z2: To protect and/or improve the amenities of residential conservation areas. Residential conservation areas have extensive groupings of buildings and associated open spaces with an attractive quality of architectural design and scale. The overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

Chapter 5 quality housing – to support redevelopment of underutilised sites and favourably consider higher densities.

Policy QH20, referred to in the appeals, refers to ensuring apartment developments follow best practice and deliver the highest quality energy efficiency and all the necessary infrastructure and contribute to the creation of attractive, sustainable, mixed-use and mixed-income neighbourhoods.

Chapters 11 – Built Heritage and Culture, and 16 – Development Standards, detail the policies and objectives for residential conservation areas and standards respectively. The principal land-use in residential conservation areas is housing but can include a limited range of other uses. In considering other uses, the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area. Proposals for live/work units at an appropriate scale with discreet signage will be considered on the basis that the proposal would not detract from, or alter the physical character and fabric of the streetscape.

Policies:

CHC1, referred to in the appeals, seeks the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

CHC2 is the policy to ensure that the special interest of protected structures is protected, and that development will conserve and enhance Protected Structures and their curtilage.

CHC4 referred to in the appeals, provides for the protection of the special interest and character of Dublin's Conservation Areas. Further detailed in section 11.1.5.4. The site is in a residential conservation area.

16.2.1.1 referred to in the appeals, refers to respecting and enhancing character and context of the city's townscape.

6.10.1 referred to in appeals, refers to Residential Quality Standards – Apartments; the standards for apartment developments set out in the Department of Environment, Community and Local Government guidelines entitled Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (December 2015), the standards set out in the plan and the requirements of other relevant development standards including public open space, play space, safety and security, and acoustic privacy standards.

16.10.10 referred to in the appeals, refers to infill housing, which should have regard to the existing character of the street by paying attention to the established building line, proportion, heights, parapet levels and materials of surrounding buildings.

16.10.17 refers to seeking retention and reuse of older buildings of significance.

5.10. Natural Heritage Designations

5.3.1 The site is not located within or directly adjacent to any Natura 2000 sites. The closest such sites within 2km are:

South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and South Dublin Bay SAC (Site Code 000210) which are within the hydrological catchment of the site.

5.11. EIA Screening

5.11.1. Having regard to the nature and scale of the proposed development and to the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for

environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Third party appeals against the planning authority's decision to grant permission were received from:

- Barbara Rafferty
- Noleen Kenny
- Eugene and Joan Swaine
- Olive Moran & Philip Dunne
- Armstrong Planning on behalf of Michael Wall (designated representative of the Upper Leeson Street Area Resident's Association)
- Dermot Gleeson
- Catriona Ní Chuív
- O'Connor Whelan Ltd on behalf of Herbert Park Area Residents Assoc.

6.1.2. The grounds of appeal could be summarised under the headings:

- Building line
- Building height / design
- Impact on the historic building and structures.
- Conservation Area
- Use for Build to Rent / Unit Mix / Business Pods
- Daylight Sunlight availability
- Open space
- Parking and Access
- Lack of information

- Drainage
- Residential Amenity
- Procedural / Legal
- Other Issues.

6.1.3. The grounds of appeal includes:

6.1.4. Building line – the building line of the four-storey block B, to the front of Pembroke Park, located significantly forward of the existing building line along Pembroke Park, would fail to mirror the line along Pembroke Park opposite. This would represent a lack of symmetry. It is a reasonable expectation that the building line on this formal Victorian street would be respected. Views from the north and west on Pembroke Park would be blocked, and the setting of St Mary’s Home would be fundamentally altered.

6.1.5. Building design - Block B would include gable ends facing the street in direct contrast to the Victorian design opposite. It would read as the side of the building inappropriately facing the street. The design would exacerbate the overbearing impact of Block B. The randomly positioned windows, would be incongruous relative to the formal Victorian facades opposite.

6.1.6. Building height – Re. building height guidelines, the inspector’s report referred to appropriate balance – there is no attempt at balance. The height is given as 14.3m the drawings show block A at 20.35m and block B 21m. The Dublin City Council Height Strategy guideline is 16m.

6.1.7. Impact on the historic building - alteration of roof profile of the historic building - it is an insensitive attempt to add an additional storey to an historic building in the conservation area. Planner’s report – ‘the issue with the proposal in this instance is the glazing followed by the heavy dark roof structure with dormers which appear to dominate’. The extra floor would be most intrusive on the character of the house, whether the original or revised roof design were accepted. Additional floors are generally not permitted to newer residential buildings in suburban settings above 3 storeys. It would not fulfil objectives CHC1 or CHC4.

The Council’s Conservation Office, not consulted in the subject application, had concerns in the previous application in relation to the height above the eaves of St

Mary's Home. The greater height and density (from 24 to 64 units) constitutes vast overdevelopment.

This is an important historic building because of the architect (Sir Thomas Newenhan Deane) and its former use, and should be a protected structure.

Removal of wall is of concern.

- 6.1.8. Conservation Area – overdevelopment of a site in a Conservation Area, at a density of 188 units per ha, creating an overly crowded and congested built environment.

Pedestrian gates and widening of the existing gate, involve removal of a significant part of the stone wall, impacting amenity.

The use of a 13.62m glass atrium link will impact on light pollution and the amenity of adjoining properties.

Removal of trees will have an impact on the amenity of adjoining properties and the area.

Loss of Luch Gate on Clyde Lane. The proposed entrance through a tunnel could be a security hazard.

- 6.1.9. Zoning – Z2 and paragraphs 16.2.1.1 and 16.10.10.

- 6.1.10. Use for build to rent – over provision of 1 bed units referred to in the FI request was not responded to. There is a high proportion of 3 bedroom and above, dwellings in the area, but new apartments should provide 2 to 3 bedroom properties of a reasonable size – larger storage, living and kitchen areas, rather than 1 bed BTR, to allow for downsizers or families. Contravenes 16.10.1 of the Development Plan. BTR is acknowledged as a poor way to deliver housing. The 'amenities' could become a party hub.

- 6.1.11. Business pods – working from home does not mean in a communal space in your home, it would defy infection control. Business pods, as shared working spaces with office-type facilities, would represent a business enterprise environment and would not come under the heading of residential development. This could become a workers commune for a large IT company transforming the development into a commercial space by stealth.

6.1.12. Precedent - it would set a precedent for disregard of the conservation zonings and conservation area designations. It runs contrary to the previous decision of the Board, which directed that the third floor of the then block B be omitted; for a density of 67 units/ha.

6.1.13. Daylight availability – daylight study shows the large number of units proposed for St Mary’s Home where full compliance with the ADF guideline could not be achieved, are located in the historic building. Report states 91% would meet minimum standards therefore 9% would not, 10 rooms. Where one room serves more than one purpose, the minimum average daylight factor used should be that for the room type with the highest value, ie for kitchens the minimum ADF is 2%. This was found to be a significant issue in the judicial review: Atlantic Diamond Ltd v ABP. The judgement referred to the Building Height Guidelines, the Apartment Guidelines, and the BRE standards:

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.

The test is not advisory minimum for annual and winter sunlight access, but annual probable sunlight hours APSH at least 25%, and at least 5% in the winter months. It should receive not less than 0.8 times its former sunlight hours during either period, and no reduction greater than 4%, to not be adversely affected.

Where the Development Plan puts such emphasis on high quality standards for residential development, as a quid pro quo for high density development, a development with an unusually high APSH failure rate is unacceptable.

Failure to accord with 16.10.1 of the Development Plan.

Failure of 3 units to meet the minimum 2% ADF, over 20% of the rooms to meet the minimum threshold for annual and winter sunlight access, and poor standard of proposed residential amenity.

Balancing considerations are not appropriate in this instance.

Daylight impact on surrounding properties – windows 11 and 13 would have a VSC % of 18 which is well below the advisory minimum of 20% and significantly below the current level of 25%. This is significantly less than 0.8 times the previous value,

being 0.72 times the previous value. This was not addressed in the planner's report, and not duly considered. The proposal would be contrary to 6.10.1 of the Development Plan.

6.1.14. Open space - poor quality of open space. The inability to provide balconies to all units is indicative of overdevelopment. The woodland garden, sculpture garden and formal lawn would be surrounded by three and four storey buildings, in close proximity, which would bear down on users. Lack of play areas or recreational areas. The woodland garden is unsuitable and should not be included.

The total area of outdoor communal space which will be capable of receiving 2 hours of direct sunlight on 21st March, is predicted to be 485 sq m.

QH20 of the Development Plan is not complied with.

6.1.15. Parking and Access – no provision for disabled parking. Access for trucks, deliveries etc, will be difficult and disrupt traffic on the road. School drop off will not be available.

6.1.16. Lack of information - on generator – a generator is shown but no information is provided; it cannot be assessed; on laundry facilities – none shown.

6.1.17. Drainage – the developer has acknowledged that excavation of a basement on the site is not viable, but there seems to be no recognition of the concerns raised in relation to the risk of excessive development on the site and its impact on the water table and local drainage. Planning history in the vicinity supports this concern. At the end of the nearby Morehampton Lane (Bartra development) the drain on the lane that was proposed for use as a sewer was a rainwater drain with a narrower gauge than required for a sewer. The development had to install an electric pump to alleviate the insufficient drainage, and the drain requires regular de-sludging. The Swan River culvert runs through the northern tip of the site.

6.1.18. Residential Amenity – laundry could be hung on Juliet balconies; light from the glass atrium would be a nuisance; and the 'amenities' could become a party hub.

6.1.19. Procedural / Legal – the council's decision to treat what was a new application, via the further particulars procedure, is in breach of legislation and in violation of the 'audi alteram partem' rule. Radical redesign requires a new application. There was failure to attend to or lend any reasonable weight to the residents submissions, while

uncritically adopting the applicant's submissions, to an extent that defies the limits of reasonableness. No reasonable person could have assessed the competing submissions of the applicant and the objectors in the manner they were dealt with by the planning authority. The planning authority failed to adhere to the zoning, in permitting a development of visually obtrusive or dominant form as it would strike the average citizen. The PA failed to observe and properly apply the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued under S28, in light of the fact that the site exceeds 0.25ha.

6.1.20. Other – space for bins is underestimated. The bins will need to be lined up on the narrow footpath two days – one for green and one for general waste.

6.2. Applicant Response

6.2.1. John Spain Associates have responded to the appeals on behalf of the first party. The response is accompanied by reports:

BPG3 - sunlight and daylight

Cathal Crimmins - architectural conservation

OCSC Consulting Engineers – engineering response.

6.2.2. The response includes:

- The site is within a residential conservation area not an architectural conservation area.
- Building line – the site at present does not present any strongly defined building line with the established line of Victorian residential properties on the street ending at Ardoyne lane to the south. The subject site therefore presents an opportunity to create high quality scheme which defines the location of the site at the corner of Pembroke Park with Clyde Road, particularly given the orientation of St Conleth's onto Clyde Road rather than Pembroke Park. The consistent building line of the 12 Victorian two storey dwellings on the eastern side of Pembroke Park, a feature on the middle section of the street, can be clearly seen to terminate at either end, the southern end defined by the rear and gable of no. 7 Herbert Park which includes a gable frontage which responds to Pembroke Park with a range of fenestration facing onto the

street. At the northern end, the subject site contains a stand-alone building in surrounding grounds, not aligned with the building line further south. St Conleth's steps closest to Pembroke Park.

Appeals argue that the previously permitted development offered a preferable approach to building line. While the building line previously permitted was considered, it was considered that the current proposal offers a higher quality architectural and design concept to the street, avoiding multiple steps in the building line which would reduce the sense of architectural rhythm and pattern which is achieved in Block B as proposed. The development does step back to the south as it nears the Victorian housing. Blocks A and D actually align closely with the existing housing, having setbacks of c14m.

Regarding the opinion expressed that the elevation represents a saw-toothed arrangement more befitting a commercial factory building, the roof echoes the pitched roofline of nearby buildings and there are examples of roof gable (eg Dutch Billies) throughout the city. The design is innovative and contemporary.

- Z2 zoning – that it is a visually obtrusive and dominant form – the development accords with the zoning. Re. residential conservation areas – build to rent protects the residential character of the area.
- Building height – that the height of block B will be 21m – this is factually incorrect. The height of block B will be 14.3m above ground to the pitch of the roof structure.

Re. condition 2 to 303005 the appellants argue that the heights of Block B and the proposed new roof to Block A are contrary to this precedent. This is not the case. The proposals retain a three storey height onto Clyde Lane, which is the same scale arrived at following the appeal to the previous application. The scale and height of Block B and the proposed roof structure to the existing building are located on the opposite side of the site, facing Pembroke Park, and form an appropriate and attractive proportional framing of the adjoining street. The

fall considerably below 16m in height, the limit for low-rise residential development locations such as this.

- Unit mix – the proposed development being build to rent, the SPPRs referred to SPPR 1 and SPPR 2, do not apply.

Unit mix and build to rent – reference to Draft Dublin City Development Plan is not relevant. The application will be considered under the operative plan 2016-2022.

The assertion that the unit sizes and types are not needed in the area is contradicted by evidence.

- Sunlight and daylight – referring to the issues raised:

that the levels of daylight predicted for some proposed rooms fall short of advisory minimums and offer poor residential amenity;

that the compensatory design measures and factors included in the scheme are not adequate to address the departures;

that the PA have not correctly considered the development against the relevant standard to demonstrate conformity with the guidelines in particular the advisory minimum of 2% ADF for open plan living room/kitchen areas;

that the sunlight and daylight assessment report contained inconsistencies in relation to the impact of the development on the VSC for surrounding properties;

that the departure identified in respect of one room based on the VSC analysis provided, should not have been characterised as a low magnitude impact;

they refer to the BPG3 report attached to the response.

- Proposed works to the existing building on site, roof structure, and boundary treatments – re. the proposed extension at roof level, their conservation report states:

It is proposed to remove the existing roof structure of St Mary's Home in order to construct a two-storey extension that will provide additional units that comply with statutory requirements. The architectural report accompanying this application includes many precedents for this

approach in Dublin and also international examples. The architectural design is a contemporary take on pitched slate covered roofs and dormer windows without falling into the trap of pastiche style. The materials will be natural slate with powder coated aluminium at penthouse level which is set back from the external envelop. The present roof covering is in poor condition and the proliferation of dormer windows are a modern intervention.

Two conservation architect's have reported on the proposed development. The first, in supporting the further information response, includes that the revised design has been predicated on the need to strike an appropriate balance between providing a less visually dominant design response utilising more traditional materials and finishes, whilst maintaining a contemporary aesthetic. The second conservation architect supports this report and adds that the change in roof materials from dark slate to a red clay tile will visually lighten the roof structure. It is a material that will tie in with the surroundings, etc.

The desire of existing residents to not have any visible development facing their dwellings, across their front gardens and a broad roadway, is not a valid planning ground.

Removal of wall – some portions of boundary wall will be removed to provide access to the proposed development. The large majority of the boundary to Pembroke Park will be retained with a minor removal to provide for adequate vehicular access and a small separate pedestrian gate. A similar approach is taken to the wall to Clyde Lane. The gateway to Clyde Lane can be re-erected within the site, as proposed in the previous application, should the Board so wish.

- Residential amenity – overlooking – there is a distance of over 29m between the front facades of block B and the houses on the opposite side of Pembroke Park. Existing street trees, to be retained, will further restrict overlooking. Re the rear of nos 2, 4 and 6 Pembroke Park, views will be restricted by Block D, which provides only opaque / frosted windows (serving a bathroom in each unit) facing southwards. Block A is significantly removed from these

properties, with the line of sight restricted to ameliorate overlooking, by the location of block B.

- Drainage and Foul Sewer capacity – the response refers to the report from the Engineering Consultants, attached. Surface water attenuation to greenfield rates will improve the performance vis a vis existing. The wastewater strategy for the site accords with IW requirements, and confirmation of feasibility from IW is provided. This requires SUDs measures, which are proposed.

The proposal has been approved by DCC Drainage Department.

- Proposed Emergency Generator – the response refers to the Engineering Report, attached – the generator is required to ensure power to the sprinkler system in the event of an emergency. It will be located within a noise-limiting acoustic enclosure which will ameliorate any risk of significant amenity impact. Testing will be carried out once a month at an appropriate time of day.
- Open space provision – the planner's report provides a detailed analysis. Per SPPR 8 alternate /compensatory measures can be put in place. The inclusion of balconies / terraces for all units would compromise the intent and architectural concept for the development, which seeks to provide for an appropriate design response to the surrounding area and particularly along the frontage with Pembroke Park. 279% of the minimum requirement for communal space is provided. FI response provides private OS to serve the units within block A facing onto the woodland garden. Juliet balconies on the facades of block B introduce a sense of linkage with the outdoors. The addition of private open space to the units facing into the formal lawn open space from block A was not considered appropriate in architectural or landscape architecture terms, however enhanced defensible planting has been provided along the frontage of this building with the lawn, while generous windows will provide a strong visual link. The location is in proximity to Herbert Park, 13 ha of high-quality urban parkland. Re. the level of compensatory amenity – internal resident amenities of 110 sq m (a lounge/reception area, parcel and post boxes at a centralised location, lounge/ business pod/ co-working space, a multi-function room and a

kitchenette), resident support facilities of 101 sq m. (two bin stores, bicycle store and a storage room, visitor cycle parking and cargo bike parking and individual spaces); are equivalent to 3.3 sq m per apartment. Communal open space is far in excess of the minimum standard representing 279% of that required. Sunlight received – sculpture garden and formal lawn will satisfy advisory minimum in BRE. The woodland garden will not satisfy advisory minimum in BRE. There is inevitable shading between the existing building and St Conleth's. The landscaping scheme has responded by the introduction of tree planting and appropriate species, to ensure the space is comfortable and sheltered even when not in receipt of direct sunlight. Even if only considering the areas receiving the advisory minimum sunlight, the c 485 sqm of communal open space would still significantly exceed the minimum c 305 sqm required. For public OS a contribution in lieu is proposed.

- Parking and access – parking requirements – SPPR 8 takes precedence – this is a BTR, with high-capacity high frequency public transport, in a highly accessible urban location, in close proximity to city centre and various facilities and amenities. The development represents an opportunity to deliver build to rent residential development at an appropriate location, while promoting the use of sustainable transportation modes.
- Procedural matters – that the FI response was in fact a new application, this is not correct. It was not significant. The appellant has not been deprived of an opportunity to make his views known, demonstrated by the fact that he has made an appeal. That the PA did not consider the third party observations – the FI request appears to reflect some of the observations. The Board will consider the application de novo.
- Other – glass atrium – it sits c 2m back from the corner of the existing building and c 10m back from the front of block B. The limited amount of light emanating from the atrium area would not give rise to any material impact on residential amenity. The space will be lit at night via a motion sensing system.
- Part V proposals were provided and a copy of the layout showing same is included. Laundry facilities will be provided in each apartment and hanging of washing from external Juliet balconies will not be permitted. Wildlife – the site

is not of any particular biodiversity value, the proposed development will include significant replacement planting.

6.2.3. BPG3 sunlight and daylight

- Both BRE who published BR209 and the British Standards Institute who published BS 8206 intend for their guidelines to be used flexibly because both organisations recognise that daylight forms only one element of a properly designed development. Page (iii) of BS 8206, page 1 of BR209, are referred to in this regard. Section 4.5 of the National Planning Framework and Section 16.10.1 of the development plan are referenced as referring to flexibility in the application of standards and being guided by the principles of the BRE publication. It has not been possible to demonstrate full compliance with advisory minimums in a small number of cases. Re. ADF 10 of the 116 rooms proposed, all located within the existing building, fall short. For APSH, 22% and 21% of units fall short of the advisory minimums for annual and winter sunlight access respectively. It is their view that reasonable levels of natural light would still be available. They refer to wider planning objectives and the need to preserve as much of the existing building fabric being an important objective. This has meant that design remedies, such as increasing glazed areas, have not been available to the design team. It is their view that ample compensatory justification has been provided. They develop this argument at page 4 of their report.
- They respond to the criticism of the PA's consideration of the appropriate standard against which to test open plan rooms which contain a kitchen, stating that in the case referenced, it was concluded that the Board's assessment was inadequate because it was not obvious within their deliberations that they were aware that the overall compliance rate which was being reported for ADF relied on an incorrect performance target (1.5% rather than 2%). They do not consider that the same criticism could be levelled at DCC's assessment because the conformance rate which is reported within their latest planning report has been determined with reference to the correct performance targets. They reiterate that for open plan rooms which include a kitchen assessed against the correct 2/0% ADF target, the proportion of rooms within the proposed development which achieve conformance with the

guidelines minimums would be 91%. The 95% referred to in the DCC planning report, is with reference to a relaxed ADF target of 1.5%, which represents a rate that BPG3 in their professional opinion believes represents the proportion of rooms within the development which would achieve a reasonable level of ADF.

- Responding to a grounds of appeal, they correct an item in their further information report 1 of 2, regarding non compliance with the VSC (skylight) in the case of 1 room in the impact on existing adjoining development. This was detailed in the data but misrepresented, by oversight, in the report. Responding to a grounds of appeal that the departure in relation to this room should not be considered 'low', they continue to assert as their opinion that the impact is 'low'. The VSC level is only 10% below the advisory minimum recommended by BRE.

6.2.4. Cathal Crimmins architectural conservation

- The conservation architect supports the previous report and adds that the change in roof materials from dark slate to a red clay tile will visually lighten the roof structure. It is a material that will tie in with the surroundings. It would be preferable for the clay tile to be small in size rather than a large pantile. Its detailing should be the traditional in that the hip tile and gutters should be as the images without metal flashings and gutters. The change from the lightweight glazed 2nd floor to a brick finish lessens the impact of the proposed roof. The bricks should be similar clay bricks of the same dimensions with lime mortar joints to match the original. The triangular dormer windows are obviously contemporary and of less weight to the rectangular ones submitted. It is important that if the glazing has to be broken to satisfy ventilation that the proportions are well considered and the materials slim, for simplicity. Steel windows might be considered. This is a conservation area which should not be confused with an ACA.

6.2.5. OCSC Consulting Engineers – engineering response:

- Confirmation of feasibility from IW includes:
The receiving sewer is combined. The development has to incorporate Sustainable Drainage Systems / Attenuation in the management of

stormwater and to reduce surface water inflow into the receiving combined sewer. Full details of these have to be agreed with the LA Drainage Division.

6.3. Planning Authority Response

6.3.1. The Planning Authority has not responded to the grounds of appeal.

6.4. Further Responses

6.4.1. The appeals and the first party response were circulated and responses were received from the third party appellant's Olive Moran & Philip Dunne, Catriona Ní Chuiv, Dermot Gleeson, Noleen Kenny, Barbara Rafferty, Eugene and Joan Swaine, and Upper Leeson Street Area Resident's Association, and from the observer Margaret Hannan. The submissions generally support the third party appeals and disagree with the first party response. The submissions include: that the presence of existing public open space should not be cited as compensation for inadequate provision; Block B should be omitted; changes in policy regarding BTR, proposed in the draft development plan, are referred to; and it is argued that further information cannot include design revision.

6.5. Observations

6.5.1. An observation has been received from Professor Margaret Hannon, Pembroke Park, which includes:

- Pembroke Park's houses are all two storey, symmetrical and have the same building line, preserved for over 100 years. Block B has four storeys, very unusual window layout and is completely incompatible with the streetscape. Pembroke Park's residents, facing block B residents opposite, will be able to see directly into these apartments. As a result of the removal of trees there will be no screening. Mature trees and planting should be retained. The design, building line and height of block B should be reconsidered and consideration be given to the impact on the residents opposite.
- The granite wall in front of blocks A and B is to be altered by adding a number of pedestrian gates. No changes should be made to this wall.

- Car parking – none provided. It is likely to result in safety issues, adjacent to St Conleth’s school which is a busy junction for school pick-up and drop-off.
- Observer was not granted off-street parking and avails of on-street. The increase in on-street parking will present a very difficult situation for the observer, as an on-call medical consultant to an acute hospital, where rapid access to her car is essential to allow her to get to the hospital in emergencies.
- Quality of units – average daylight factor and average sunlight hours are not complied with.

7.0 Assessment

7.1. The issues which arise in relation to this appeal are: appropriate assessment, the principle of the development, impact on historic structure residential conservation area and dwellings, overlooking, overshadowing, traffic and parking, BTR, and other issues and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.3. Principle of Development

7.3.1. The subject site is zoned Z2: Residential conservation area where the relevant objective is *“To protect and or improve the amenities of residential conservation areas”*. Residential development is permissible in principle within this zone.

7.3.2. The proposed reuse of the existing St Mary’s building and the further development of the site for apartment units is in keeping with the zoning objective. The increase in density, proposed in this development, accords with policy and guidance. The development of this underutilised site is generally consistent with the policies of the

Development Plan the NPF and Rebuilding Ireland, The Government's Action Plan on Housing and Homelessness.

- 7.3.3. The plot ratio given as 1.23 and site coverage given as 44.95%, fall within the development plan's indicative standards of 0.5-2 for plot ratio and 45% for site coverage.
- 7.3.4. Subject to detailed considerations of design, servicing and amenity the proposed development is acceptable in principle.

7.4. Historic Structure, Residential Conservation Area and Dwellings.

- 7.4.1. The proposed building, Block B, together with the upward extension of the existing building, will have a substantial presence on the road, and for those dwellings on the opposite side of the road, the altered view, from that currently presented by trees and greenery, to large built forms, will be significant.
- 7.4.2. The provision of the glazed link to the existing building is of concern to appellants and the observer who consider that the use of a 13.62m glass atrium link will impact, causing light pollution, on the amenity of adjoining properties.
- 7.4.3. It should be noted that the permitted development has a similar glazed link. It is, in my opinion, a suitable means of connecting the existing and proposed buildings.
- 7.4.4. Dwellings opposite are separated from the proposed development by the width of the road, and by street trees along either side. Although the trees will not fully screen the proposed development, they will provide some screening and reduce the visual impact from the dwellings opposite, and from the road.
- 7.4.5. Appellants and the observer are concerned about the building line. It is argued that the building line, established by dwellings on Pembroke Park, should be maintained.
- 7.4.6. The Board will note that in the previous application / appeal, the development then proposed stepped forward in a graduated manner, to a line, given as 6.877m from the roadside boundary at the northern end. In the current proposal, block B, which has a uniform building line, is shown to be 4.920m from the roadside boundary; almost 2m nearer to the road.
- 7.4.7. The consistent formal building line is a strong feature of the established streetscape on Pembroke Park. However, because the subject site is so heavily planted with

trees, it does not currently read as part of the road's formal building line. The Board has previously accepted a building on this site, forward of the building line established further along the road. It is my view that the subject site, which together with St Conleth's College forms part of a grouping of larger buildings at the end of Pembroke Road, separated by Ardoyne Lane from the dwellings south, is capable of supporting a building line forward of the building line of the Pembroke Rd dwellings. In my opinion the suitability of the building line should be considered in terms of the overall impact of the proposed development.

- 7.4.8. Appellants and the observer are concerned about the removal of the roof and the impact of the additional floor above, in terms of the impact on the historic building. It is stated that the development will result in complete destruction of the internal fabric and interior layout of the existing St Mary's Home; that the second floor, currently presenting as a dormer/gable to the front and southeast side would be demolished; and that the existing quatrefoil window and ornamented summit would be retained, but its architectural value diminished. It is stated that this is an important historic building, because of the architect and its former use, and should be a protected structure. Appellants and the observer are concerned about the loss of portions of the granite wall along Pembroke Road and the pedestrian gateway to Clyde Road.
- 7.4.9. There is no proposal to add the building to the list of protected structures and the Board has no function in this regard. The existing building has been heavily modified since it was designed by the prominent architects of the time: Thomas Newenham Deane and Son. The historic association with the original designers, with the benevolent school system at the time of its establishment, and with the more recent use as a nursing home, will be protected by the retention of the outer shell of the building. The removal of the roof and interior of the building is justified on the basis of the condition of these elements. I have no concerns regarding the modifications proposed, including the removal of the existing roof and the addition of a floor. The design of the extension at roof level has been subject to detailed consideration, including redesign at further information stage, when various designs were considered, prior to the selection of the proposal submitted. In my opinion the modifications to the existing building are acceptable.
- 7.4.10. The removal of a significant part of the stone wall which fronts Pembroke Road, to provide a pedestrian gate and the widening of the existing gate, has been raised as

a concern. Along Pembroke Road, the proposal includes removal of 3.5m at the main entrance to widen the existing 3.5m entrance to 7m. A new opening to the north is proposed, to provide a pedestrian gate. Along Clyde Lane a considerable amount of wall is to be removed and a lychgate to provide individual entrances to dwellings, and an entrance to the overall development.

- 7.4.11. Loss of any of the granite wall is undesirable. However, in my opinion, the removal of portions of these walls is a necessary part of the proposed development. The widening of the vehicular entrance to 7m width is not excessive. The separate pedestrian entrance is a reasonable requirement, and the alterations to the wall along Clyde Lane will retain portions of the high wall along the frontage. Substantial areas of both walls will remain.
- 7.4.12. In relation to concerns regarding the loss of the existing pedestrian gateway to Clyde Lane, the applicant has offered to have it re-erected within the site. In my opinion there would be no real benefit to such a proposal.
- 7.4.13. As previously noted, Block B is forward of the permitted, not developed, building line, which the Board considered under ref. 305005 in 2020. Appellants and the observer are concerned about the scale, design and impact of this building on the road and on the dwellings opposite. The proposed building comprises a substantial, part three storey and part four storey building, which is to be finished in brick, with a series of gables fronting the road. The gable front features and the use of brick, echo the existing building on the site and serve to reduce the impact of the scale of the building.
- 7.4.14. Although part of the conservation area, the site is not comparable to the dwellings on Pembroke Road. Together with St Conleth's College, it is part of a grouping of buildings, separate to the dwellings on the road. These buildings are already of a different scale to the two storey dwellings, and the design of the proposed development, does not need to be unduly constrained by the scale or design of the dwellings.
- 7.4.15. The 'verified views' which accompanied the application, in chapter 10 of the Architectural Design Statement, show the proposed development from 3 viewpoints: 1 from further south along Pembroke Rd, 2 from opposite the junction of Pembroke Road and Clyde Road, and 3 from opposite the junction of Clyde Lane and Clyde

Road. The view location map provides support for the photomontages. It can be seen that the northern half of the road frontage is developed to the site boundaries and the trees within this area, which feature in the view as represented, would be entirely removed. There would remain trees on St Conleth's site and along the street. It appears however that the screening provided in the post development situation would not provide full screening and that the development would be much more apparent in the view from this location, than depicted in viewpoint 2.

- 7.4.16. Nevertheless, in my opinion, the design of the proposed building is a reasonable response to the provision of a substantial building on the scale required to maximise the use of this centrally located site, without unduly impacting on the amenities of the area. The gable profile gives relief to the building's bulk. The street trees will offer an element of screening from the road.
- 7.4.17. It is noted that in the previous case the Board required (condition no. 2) the omission of the third floor of the then Block B, which was to the north and east of the existing building, in the general vicinity of Block C in the current proposal. Block C is a three storey building (i.e. no third floor). In my opinion the elevation to Clyde Lane of Block C, harmonises with the existing contemporary buildings on the lane and the historic mews building on the adjoining site.
- 7.4.18. Blocks B and C have been carefully modulated to have the minimum impact on adjoining areas.
- 7.4.19. In my opinion the proposed development would not have a negative impact on the amenity or architectural quality of the area.
- 7.4.20. Impact on historic structures, the conservation area or individual dwellings should not be a reason to refuse or modify the proposed development.

7.5. **Overlooking**

- 7.5.1. There are dwellings on the opposite side of Pembroke Road, on the opposite side of Clyde Lane, on Ardoyne Lane backing to Clyde Lane, and on Pembroke Road to the south of Ardoyne Lane.
- 7.5.2. The proposed development along Clyde Lane is three storeys, along Ardoyne Lane it is two storeys and on Pembroke Road it includes development of three and four

storeys. The proposed development has been designed to avoid overlooking of the rear of existing residential development, including the use of screens and obscured glazing in the two storey development along Ardoyne Lane and the placement of the two storey blocks along Ardoyne Lane, as a screen for the southern elevation of the existing extended building.

7.5.3. The appellants and the observer are concerned about the impact of overlooking of dwellings opposite and to the south on Pembroke Road. Those opposite are separated by the width of the road and by street trees along either side, from the front gardens of the dwellings opposite. The dwellings themselves are well set back from the road. As pointed out by the applicant, the distance between the front facades of block B and the houses on the opposite side of Pembroke Park is over 29m. Those to the south are screened from the higher apartments by block D, the two-storey, mews-type block along the south of the site. Within the proposed development, overlooking is avoided by the development design.

7.5.4. In my opinion overlooking should not be a reason to refuse or modify the proposed development.

7.6. **Overshadowing**

7.6.1. Daylight and sunlight availability have been subject to detailed examination, both in relation to adjacent properties, and in relation to the amenities of future residents. An examination and assessment, accompanied the application, presented in the report titled 'Assessment of Daylight Levels,' by BPG3. In response to the further information request BPG3 provided two reports: 'Daylight Report 1 of 2 Daylight Impact Report' and 'Daylight Report 2 of 2 Assessment of Daylight Levels'.

7.7. Existing Development:

7.7.1. For daylight/ skylight, vertical sky component (VSC) is used. Where departures from the BRE's targets for skylight access were found, their significance was assessed by means of secondary testing: average daylight factor, (ADF), to provide an accurate indication of the levels of daylight amenity which would be provided within the associated interior space. The assessment reports on 59 windows associated with 41 rooms.

- 7.7.2. In relation to the impact on adjacent properties only 1 window, room 2 – the art room in St Conleth’s College, is shown not to comply with the standards set in the BRE document ‘Site Layout Planning for Daylight and Sunlight’. It is stated that the impact falls at the lower end of the scale and is therefore assumed to fall within tolerable bounds.
- 7.7.3. For sunlight availability to adjacent properties, annual probable sunlight hours (APSH), is used. This was assessed using the same 59 windows, testing only those facing within 90° of due south. All but 1 were found to satisfy the BRE guide. In that case, window 36, (the double height living room within No. 2 Ardoyne Mews) alternate windows serve the space, which would retain acceptable levels of sunlight access. All rooms would receive levels of sunlight which exceed advisory minimums.
- 7.7.4. Sunlight to amenity space - a survey of the neighbouring environment identified a sample of nine neighbouring outdoor recreation spaces, where altered sunlight levels could potentially register. It is stated that full compliance with BRE advisory minimums has been demonstrated for all gardens assessed. All outdoor areas would receive levels of solar access which exceed advisory minimums and reasonable sunlight would remain available.

7.8. Proposed Development:

- 7.8.1. Modelling was carried out for the windows of the proposed development (daylight and sunlight) and for sunlight to the proposed amenity spaces.

Daylight:

- 7.8.2. In the documents submitted with the application, a sample of points (windows), considered to represent the overall development was used. Arising from the further information request, further windows were assessed. Also arising from the further information request, modifications to the design were carried out, to increase the compliance rate.
- 7.8.3. In total 63 rooms were considered. Internal skylight amenity would be available to 53 of the 63 rooms.
- 7.8.4. The rooms, ten in total, which are predicted to fall short of advisory minimums, are located within and subject to the constraints of the existing historical building: at level 00 rooms 13, 14, 15, 24 & 25, and at level 02 rooms 15, 16, 18, 19 & 20. The design

of the development seeks to minimise impact on the facades of this existing building, where existing window openings are to be retained.

7.8.5. In support of the proposal they submit that ‘when assessing the significance of the departures identified in this study it is important to recognise a number of compensating factors:

- Good levels of internal skylight amenity have been predicted for the communal kitchen/lounge proposed at ground floor within Block A.
- A carefully designed artificial lighting strategy is envisaged to balance the light levels which would be present to the rear of the rooms with the light levels which would be provided to the front.
- Supplementary task lighting is envisaged above the sink, the cooker, and the counter areas.
- The wider scheme has been designed to a high standard with high quality internal finishes and external landscaping envisaged.
- Additional features which would contribute to the attractiveness of these apartments include the proximity to employment centres, essential services as well as the favourable location relative to retail and recreational destinations.
- In offering their professional assessment, in addition to the predicted light levels and the conventional advisory minimums which they term primary assessment, they go on in many instances to consider the significance / meaning of these primary test results, by carrying out secondary assessment.
- They state that this is necessary as the outputs from conventional daylight testing do not always provide a reliable indication of daylight acceptability, for reasons including:
 - The tests were developed in the late 1980s when only pencil and paper was available.
 - The simplifications place limitations on the degree to which results accurately represent the reality of daylight acceptability, as observed by a human.

- They are aware of certain scenarios where the simplifications produce results which are not only rough approximations but gross misrepresentations of the reality which would be experienced by a human observer.
- Many of the targets are a 'one size fits all' whereas a variety of factors such as use of a space, occupant expectations, as well as wider contextual factors are all capable of acting as upward or downward modifiers.
- Targets are set independently to current planning policy.

7.8.6. I accept the argument that the achievement of daylight standards needs to be balanced against the desirability of retaining and re-using the existing building. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines state that planning authorities should apply their discretion where an applicant cannot fully meet all of the requirements of the daylight provisions, which may arise due to a design constraints associated with the site or location, and that balancing of such an assessment is required, against the desirability of achieving wider planning objectives. I accept that, notwithstanding the failure to achieve the daylight standards set out in the BRE document, in the case of 10 assessed windows, the units will be provided with reasonable levels of residential amenity.

Sunlight:

7.8.7. BRE states that reasonable sunlight will be achieved where at least one main window faces within 90° of due south, and the centre of at least one window to a main living room can receive 25% of annual probable sunlight hours, including at least 5% of annual probable sunlight hours in winter months, between 21 September and 21 March. It advocates flexibility as the assessment criteria are often challenging to meet, particularly in urban locations where neighbouring buildings and site orientation can restrict access to direct sunlight.

7.8.8. BS 8206 states:

The degree of satisfaction is related to the expectation of sunlight. If a room is necessarily north facing or if the building is in a densely built urban area, the

absence of sunlight is more acceptable than when its exclusion seems arbitrary.

- 7.8.9. The report states that 384 windows have been considered, a strict interpretation of the BRE guidelines would show an overall compliance rate of 68%, and a winter compliance rate of 71%. For annual sunshine hours, 15 out of 25 units at ground level, 9 out of 11 at first floor level, 14 out of 16 at first floor level and all 12 units at third floor level comply with the guidance. The site constraints are referred to and that it important to extend a significant amount of leniency to the departures arising, particularly for the north facing units, which benefit from attractive views over the Woodland Garden. It is pointed out that skylight availability is the more relevant measure, in these latitudes. They refer to the Sustainable Urban Housing: Design Standards, regarding north facing units.
- 7.8.10. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities – Department of Housing Planning and Local Government March 2020, acknowledges that north facing single aspect apartments may be considered, where overlooking a significant amenity such as a public park, garden or formal space, or a water body or some other amenity feature; as is the case in the subject development.
- Sunlight amenity to Proposed Recreation Areas:
- 7.8.11. Two outdoor recreation spaces have been considered: a Woodland Garden to the north of the site (340m²) and a Formal Lawn & Sculpture Garden to the south (590m²), which they consider to be the principal outdoor communal area.
- 7.8.12. The recommendations of the BRE guide would be satisfied for the Formal Lawn & Sculpture Garden, but not for the Woodland Garden.
- 7.8.13. The communal area requirements are satisfied with the Formal Lawn & Sculpture Garden. The total area capable of receiving 2 hours of direct sunlight on 21 March is predicted to be 497m², as given in table 14 and shown in figure 25.
- 7.8.14. Conclusion:
- 7.8.15. I note that very limited impact on adjoining properties arises as a result of the proposed development.

7.8.16. In my opinion the proposed development strikes a reasonable balance between new housing provision, the safeguarding of the future of the historic building and the need to provide future occupants and neighbouring residents with access to reasonable levels of daylight amenity. Overshadowing should not be a reason to refuse or modify the proposed development.

7.9. Traffic and Parking

7.9.1. The concerns of appellants and the observer are that there is no provision for disabled parking; access for trucks, deliveries etc, will be difficult and disrupt traffic on the road; and school drop off will not be available. They state that it is likely to result in safety issues, adjacent to St Conleth's school, which is a busy junction for school pick-up and drop-off.

7.9.2. The observer was not granted off-street parking and avails of on-street parking. As an on-call medical consultant to an acute hospital, where rapid access to her car is essential to allow her to get to the hospital in emergencies, the increase in on-street parking will present a very difficult situation.

7.9.3. The applicant points out that SPPR 8 takes precedence over the development plan. This is a BTR, with high-capacity high frequency public transport, in a highly accessible urban location, in close proximity to city centre and various facilities and amenities.

7.9.4. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, Department of Housing Planning and Local Government March 2020, includes:

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 minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

These locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas

stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.

7.9.5. I am satisfied that the site is located in an area where active modes of travel are available and that the proposals for servicing and access including the bicycle store, visitor cycle parking and cargo bike parking, 2 car share spaces – GoCar, and 2 service / set down spaces, facilitate the minimisation of car parking provision, which is desirable in this location. I agree with the

7.9.6. I agree with the assessment of the Transportation Planning Division of Dublin City Council that accessible drop-off can be facilitated within the service / set-down spaces and having regard to the scale and type of units proposed, the connectivity of the site, the active mode provision (shared use) the service and drop-off facilities as well as measures outlined within the submitted Parking Strategy & Traffic Assessment and the MMP, the proposed car parking provision is acceptable in this instance.

7.9.7. Traffic and Parking should not be a reason to refuse or modify the proposed development.

7.10. **BTR**

7.10.1. Many of the appeals refer to the nature of the residential occupancy, expressing concern about build to rent. It is argued that in this area, where there is a high proportion of houses of 3 bedroom and above, new apartments should provide 2 to 3 bedroom properties of a reasonable size with larger storage, living and kitchen areas, to allow for downsizers or families, rather than 1 bed BTR. They state that it contravenes 16.10.1 of the Development Plan, and that BTR is acknowledged as a poor way to deliver housing. They are also concerned that the 'amenities' could become a party hub. In addition they are concerned about the inclusion of business pods. They argue that working from home does not mean in a communal space in your home. It would defy infection control. Business pods as shared working spaces with office-type facilities, would represent a business enterprise environment and would not come under the heading of residential development. This could become a workers commune for a large IT company transforming the development into a commercial space by stealth.

- 7.10.2. The Market Demand Report submitted in response to the further information request states that there is a significant requirement for one bedroom units in Dublin City, with insufficient supply to meet this demand; that Ireland's population continues to expand; this increase causes a natural demand for housing of all types, including rental accommodation, and in conjunction with the decline in the average household size, places greater pressure on housing.
- 7.10.3. The argument that the existing pattern of larger single houses, should be reflected in apartments of a generous size would not achieve a residential development of the density proposed. The provision of build to rent apartments is specifically provided for on centrally located sites such as the subject site, and the standards set out in the 2020 guidelines supercede those in the development plan (such as section 16.10.1), referred to in the appeals.
- 7.10.4. Regarding the appellants and observer concern that the proposed 'business pods' could transform the development into a commercial space by stealth. The provision of working space, as part of the facilities/ amenities being provided in the proposed BTR scheme would allow residents, only, to use these spaces for home working and allow them the choice of working within their own apartment or in a shared space. This is in line with the developing hybrid model of work, currently being discussed nationally. The pods would provide residents with workspaces which facilitate more social interaction. As a BTR scheme the development is for mobile workers and would be managed, whether ultimately controlled by a company for its own workers or rented to workers from various employments, is outside the Board's remit. The encouragement of hybrid working would indicate that the availability of a work space in such a development would be acceptable for use of residents, enabling those working to avail of the social aspects of using a shared space. Work spaces, in BTR schemes, as part of services/ amenities provision, is referred to in the 2020 guidelines.
- 7.10.5. Regarding the appellants and observer concern that the proposed 'amenities' could become a party hub, facilities/ amenities are envisaged as part of proposed BTR schemes. The development would be managed. As BTR they are required to be owned and operated by an institutional entity, therefore such issues should not arise.

7.10.6. In my opinion the proposed use for built to rent should not be a reason to refuse or modify the proposed development.

7.11. Other

7.11.1. It is stated as a concern that the Council's Conservation Office was not consulted. It is a matter for the planning authority to determine what internal reports are required to facilitate their decision-making.

7.11.2. It is stated as a concern that the proposed entrance through a tunnel could be a security hazard. The proposed entrance is under part of Block C. No security issue is presented.

7.11.3. It is stated as a concern that no details of the proposed emergency generator have been given and that noise may be created. The applicant response to the appeals includes an engineering report, which states that the generator is required to ensure power to the sprinkler system in the event of an emergency. It will be located within a noise-limiting acoustic enclosure which will ameliorate any risk of significant amenity impact. Testing will be carried out once a month at an appropriate time of day.

7.11.4. It is stated as a concern that the council's decision to treat what was a new application, via the further particulars procedure, is in breach of legislation and in violation of the 'audi alteram partem' rule; and that such radical redesign requires a new application.

7.11.5. I do not accept that any radical redesign was involved, nor do I accept that any redesign is not 'per se' further information. The legislation provides for requests for further information and the submission of a response with further notification if deemed necessary. In this case it was not deemed necessary.

7.11.6. It is stated as a concern that the planning authority failed to attend to or lend any reasonable weight to the residents submissions, while uncritically adopting the applicant's submissions, to an extent that defies the limits of reasonableness; and that no reasonable person could have assessed the competing submissions of the applicant and the objectors in the manner they were dealt with by the planning authority. I do not accept that this was the case. The residents' submissions are largely reflected in the grounds of appeal. Their concerns have now a further airing, have been considered in this report and are matters for the Board's determination.

- 7.11.7. It is stated as a concern that the planning authority failed to adhere to the zoning in permitting a development of visually obtrusive or dominant form as it would strike the average citizen. I do not accept that this was the case. I have considered the visual impact of the proposed development. It is my opinion that the design of the proposed development is a reasonable response to the scale required to maximise the use of this centrally located site, to provide apartments on the site.
- 7.11.8. It is stated as a concern that the planning authority failed to observe and properly apply the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued under S28, in light of the fact that the site exceeds 0.25ha. This refers to the requirement to provide for a mix of apartment sizes in developments on sites exceeding that size. In accordance with the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, issued under S28 in March 2020, which provides for build to rent, the planning criteria which may be applied include no restrictions on the mix of apartment sizes.
- 7.11.9. It is stated as a concern that public open space is not being provided and that the justification of proximity to Herbert Park should not be cited as compensation for inadequate provision. The applicant states agreement to making a contribution in lieu of provision. The site is too small for meaningful public open space provision. Given the proximity of the site to Herbert Park, the lack of public open space should be compensated-for by a development contribution.
- 7.11.10. Possible changes related to BTR in the draft development plan, have been referred to in appeals. They are not of relevance to this appeal.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that permission should be granted for the following reasons and considerations and in accordance with the following conditions.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, the pattern of development in the vicinity and the policies of the Dublin City Development Plan 2016-2022, and Guidelines issued under S28 of the Planning Acts, it is considered that, subject to compliance with the conditions set out below, the proposed development would not detract from the character of the area, would not seriously injure the amenities of adjacent residential neighbourhoods or of the property in the vicinity, would not be prejudicial to public and environmental health, would not cause flooding or be at risk of flooding and would be acceptable in terms of traffic safety and convenience. The proposed development would therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, amended by the further plans and particulars submitted on the 17th day of November 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development or as otherwise stipulated by conditions hereunder, and the proposed development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000,</p>

	<p>as amended, unless an exemption certificate shall have been applied for an been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.</p>
3.	<p>The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build to Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2020, and be used for long term rentals only. No portion of this development shall be used for short term lettings.</p> <p>Reason: In the interest of clarity.</p>
4.	<p>Prior to the commencement of any development works on site, the applicant shall submit, for the written consent of the Planning Authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold or rented separately for that period.</p> <p>Reason: In the interest of clarity.</p>

5.	<p>Prior to the commencement of development, the owner shall submit, for the written agreement of the planning authority, details of a proposed covenant or legal agreement binding on it and its successors confirming, for a minimum term of 15 years after the first occupational letting in the development:</p> <p>(a) no separate sales or equivalent disposals of any individual residential units shall take place;</p> <p>(b) the residential development shall be owned and operated by a single institutional entity;</p> <p>Such covenant or agreement shall contain such details as to ensure to the satisfaction of the planning authority the effectiveness of the foregoing requirements.</p> <p>Reason: In the interest of clarity.</p>
6.	<p>Prior to the expiration of the 15 year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build to Rent scheme. Any proposed amendment or deviation from the Build to Rent model as authorised in this permission shall be subject to a separate application.</p> <p>Reason: In the interest of clarity.</p>
7.	<p>The landscaping scheme shown on drawing number L1-100 (April 2021) as amended by L1-803 (November 2021) and the Tree Impacts Plan (March 2021) shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p>

	<p>Reason: In the interest of clarity.</p>
<p>8.</p>	<p>(a) Prior to commencement of development, and on appointment of a main contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>(b) A Construction Traffic Management Plan shall be submitted and this shall clearly detail vehicular access proposals, management and mitigation measures, mobility management measures for construction staff including onsite cycle parking provision. Vehicular construction access via Clyde Lane should be restricted, as far as possible, and any access requirements clearly detailed.</p> <p>(c) At the vehicular access/exit point to the development, the public footpath shall be continued at a raised level across the site entrance and exit, but shall be ramped and dropped as necessary (e.g. 32mm kerb over carriageway) to facilitate car-entry/exit. Measures shall be implemented, including contrasting materials, signing, and road marking, etc. to ensure that vehicles entering/leaving the development are aware that pedestrians/cyclists have priority across the site entrance and that vehicles must yield right-of-way. Details shall be agreed in writing with the planning authority prior to commencement of the development.</p> <p>(d) 2 no. parking spaces shall be allocated to car share and 2 no. parking spaces shall be allocated to loading / set-down. Electrical Charging facilities shall be provided for both car share spaces.</p> <p>(e) Cycle parking shall be secure, conveniently located, sheltered and well lit. Electric bike charging facilities shall be provided. Key/fob access shall be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.</p>

	<p>(f) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.</p> <p>Reason: In the interest of clarity.</p>
9.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and all surface water shall be treated within the site.</p> <p>Reason: In the interest of public health.</p>
10.	<p>Prior to commencement of development the developer shall enter into water and waste water connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
11.	<p>(a) The developer shall comply with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0 (available from www.dublincity.ie Forms and Downloads).</p> <p>(b) The drainage for the proposed development shall be designed on a completely separate foul and surface water system with a combined final connection discharging into Irish Water's combined sewer system. Dead leg for future surface water connection shall be provided.</p> <p>(c) The development shall incorporate Sustainable Drainage Systems in the management of surface water. Full details of these shall be agreed in writing with Drainage Division prior to commencement of construction.</p> <p>(d) All surface water discharge from this development shall be attenuated in accordance with the requirements of the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0. Surface water attenuation calculations shall be submitted to DCC Drainage Division prior to commencement of construction.</p>

	<p>(e) Flood mitigation measures outlined in the Site Specific Flood Risk Assessment by OCSC Consulting Engineers shall be fully implemented, including maintaining a 1.5 metre wide, ground level, overland flow route across the site.</p> <p>(f) The outfall Surface Water manhole from this development must be constructed in accordance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.</p> <p>(g) All private drainage such as, downpipes, gullies, manholes, Armstrong junctions, etc. are to be located within the final site boundary. Private drains should not pass through property they do not serve.</p> <p>Reason: In the interest of environmental protection.</p>
12.	<p>a) Noise Control and Air Quality Control - Demolition and Construction Phase:</p> <p>(i) A Construction Management Plan shall be prepared on behalf of the developer and contractor. This Construction Management Plan shall be submitted to, and agreed in writing, by the Planning Authority, prior to commencement of development. This plan shall be developed with reference to the Code of Practice for Construction and Demolition produced by the Air Quality Monitoring and Noise Control Unit of Dublin City Council. The development for this purpose shall be deemed to be medium to high risk.</p> <p>(ii) The hours of operation during the demolition and construction phase shall be restricted to 7.00am to 6pm, Monday to Friday, and 8.00am to 2.00pm on Saturdays. Permission to work outside of these hours must be subject to the approval of the planning authority.</p> <p>Noise Control – General:</p> <p>b) The LAeq level measured over 15 minutes (daytime) or 5 minutes (night-time) at a noise sensitive premises when plant is operating shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more,</p>

	<p>measured from the same position, under the same conditions and during a comparable period with no plant in operation.</p> <p>Air Quality Control - General</p> <p>c) No emissions, including odours, from the activities carried on at the site associated with the development shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary.</p> <p>Reason: In the interest of environmental protection and to protect residential amenities</p>
13.	<p>The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developers expense.</p> <p>Reason: In the interest of environmental protection.</p>
14.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect visual amenities.</p>
15.	<p>Details, including samples, of the materials, colours and textures of all the external finishes shall be submitted to the planning authority and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of clarity.</p>

16.	<p>Prior to the commencement of any development works on site, the applicant shall submit, for the written consent of the Planning Authority, the following details</p> <p>a) a 1:20 drawing showing details of all proposed railings and gates.</p> <p>b) Full drawing survey including photographic record of all existing boundary walls.</p> <p>c) Detailed schedules of any repair and reinstatement works that are required to the walls. A method statement for the raking out and re-pointing of the stonework and associated repair details. Details of the historic stone coursing, sizes of stone as well as mortar composition and colour.</p> <p>d) Full details of all proposed new elements, such as tothing-in and repair work that may be required. All new elements shall match the historic walls.</p> <p>Reason: In the interest of preserving the architectural integrity and heritage value of the retained structures.</p>
17.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,</p> <p>(b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>

18.	<p>Proposals for a naming and numbering scheme for the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.</p>
19.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of sustainable waste management.</p>
20.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taking in charge by a Management Company or by the Local Authority of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>

21.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
22.	<p>Prior to commencement of development, the developer shall enter into an agreement with the planning authority to provide for the payment of a financial contribution to the planning authority in lieu of open space, as provided for under section 16.3.4 of the Dublin City Development Plan 2016-2022 and in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The amount of the contribution shall be agreed between the planning authority and the developer, or, in default of such agreement, shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with</p>

changes in the Wholesale Price Index – Building and Construction (Capital Goods) published by the Central Statistics Office.

Reason: It is considered that the developer should pay a financial contribution in lieu of the provision of public open space within the site, where the site is considered by the planning authority and An Bord Pleanála to be too small or inappropriate to fulfil a useful purpose in this regard given the proximity of the proposed development to Herbert Park and all of the facilities within.

Planning Inspector

11 August 2022

Appendices

Appendix 1 Photographs.

Appendix 2 Dublin City Development Plan 2016 – 2022 extracts

Appendix 3 Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities – Department of Housing Planning and Local Government March 2020