



An
Bord
Pleanála

Inspector's Report ABP-312497-22

Development	Permission to amend apartment development through the change of use of community room to use as a studio apartment.
Location	Former St. Clare's Convent and No's 115-119, Harold's Cross Road, Harold's Cross, Dublin 6
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3691/21
Applicant(s)	St Clare's GP3 Ltd
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party vs. Refusal
Appellant(s)	St Clare's GP3 Ltd
Observer(s)	Paul Walsh
Date of Site Inspection	2 nd August 2022
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The application site is located on the eastern side of Harold's Cross Road, east of Harold's Cross Park and north of a residential estate at Leinster Park. The site is approximately 350m south of the Grand Canal and outside of the inner-city canal ring. It has a stated overall site area of c. 1.7 hectares.
- 1.2. The immediately surrounding area is mainly characterised by residential properties of 2 to 3-storey height. To the northeast, the site is bounded by St Clare's Convent National School and grounds. Properties fronting Harold's Cross Road are located to the northwest of the site, with the rear gardens to a limited number of properties adjoining the subject site boundary. To the west, the site largely fronts onto Harold's Cross Road, except for a section to the southwest of the site where it hugs the boundary with an existing 3 storey residential block known as Parkview. To the south and east, the site bounds 2-storey residential properties within Leinster Park and Mount Drummond Square respectively.
- 1.3. The site itself is occupied by a recently completed residential development (220 apartment units), as previously approved and described in section 4 (Planning History) of this report. The current application relates only to Block 8 (formerly Block J1), which is located along Harold's Cross Road in the southwest corner of the site. The block has been completed and consists of 12 apartments, a communal meeting room (16.8m²), and the community room / social space (50.2m²) which is the subject of this application. The community space is currently unoccupied and has not been fitted out.

2.0 Proposed Development

- 2.1. In summary, it is proposed to change the use of the existing community room (50.2m²) to use as a studio apartment (40m²) and associated winter garden (5m²). The proposal includes internal fit-out alterations and minor external amendments to the western (front) elevation to facilitate the winter garden and window frames to match existing. One additional bicycle space will be provided at basement level.

2.2. In addition to the normal drawings and requirements, the application is supported by several reports, including:

- Planning Report
- Conservation Report & Method Statement
- Architectural Design Statement
- Appropriate Assessment Screening Report
- Daylight Sunlight Report.

3.0 Planning Authority Decision

3.1. Decision

By order dated 8th December 2021, Dublin City Council (DCC) issued notification of the decision to refuse permission for the proposed development. The reason for refusal was as follows:

Having regard to the planning history on the site and particularly 3781/17, it is considered that the applicant has failed to provide a robust justification for the loss of 50sqm of communal amenity space and considers that the loss would be seriously injurious to amenities of the residents in the development and negatively impacting on the streetscape by proposing a studio unit in lieu of an amenity space. It is further considered that the proposed unit would not enjoy an acceptable level of residential amenity given its location. The proposed development would, therefore, by itself and by the precedent it would set for other developments seriously injure the amenities of property in the vicinity, would be contrary to the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The assessment outlined in the planner's report can be summarised as follows:

- The proposed changes are minor and do not detract from the architectural quality of the previously approved block.

- The apartment floor and storage areas exceed the Apartment Guidelines standards. The single aspect nature is considered acceptable, and a winter garden will provide amenity space for future residents.
- Under P.A. Reg Ref 3781/17 (ABP Ref 301600-18) the planning authority raised concerns about the quality of residential amenity for 2 no. apartments on the ground floor of Block J1 facing onto Harold's Cross Road. The applicant's further information response replaced the 2 units with communal space, a larger foyer, and additional communal storage space. The applicant now seeks to change one of those communal rooms to residential use.
- The applicant's points regarding the additional communal space in Block D are noted, as is section 4.5 of the Apartments Guidelines which encourages communal facilities within larger developments.
- It is noted that the applicant's Daylight and Sunlight assessment indicates that the ADF value for the living kitchen area exceeds the required 2%.
- There are concerns about noise given the location of the unit at street level.
- The planning authority has remaining concerns about the loss of valuable residential amenity space and the level of amenity afforded to the proposed unit, which is consistent with the concerns outlined under P.A. Reg Ref 3781/17. The applicant has not provided any real justification for the proposal.
- There are concerns about the precedent that this would set for other similar developments.
- The report recommends a refusal of permission, and this forms the basis of the DCC decision.

3.2.2. Other Technical Reports

- Drainage Division: No objections subject to conditions.
- Transportation Planning Division: No objections subject to conditions.
- Conservation Officer: No conservation report for this file.

3.3. Prescribed Bodies

None.

3.4. Submissions / observations

One third-party submission was received from Paul Walsh, 7 Leinster Park, Harold's Cross Road. The issues raised can be summarised as follows:

- Previous decisions sought to reduce the extent of residential use in favour of improved common areas.
- The current proposal reduces the quality of living for residents.
- Concerns about the applicant's Daylight and Sunlight assessment are outlined as follows:
 - The claimed ADF value of 3.9% is not credible when compared to previous assessments for south-facing units in the development.
 - It ignores the impact of dense evergreen trees in front of the unit.
 - The updated BS EN 17037:2018 standards should be used.
 - Opaque glazing and curtains/blinds will be needed to protect privacy, and this will impact on the actual ADF achieved.
- The unit will suffer sound and vibration effects from adjoining traffic and no evidence has been submitted of appropriate noise insulation.
- Inadequate evidence of compliance with fire safety requirements.
- The limited area and storage space contributes to a very sub-standard unit.
- The process did not allow adequate time to make a thorough submission.

4.0 Planning History

There is an extensive planning history relating to the overall site. In summary, the following applications have been noted:

ABP Ref. 308533-20: In February 2021 the Board made a decision to grant a SHD application for alterations to previously permitted development Reg.Ref:2186/15 (PL29S.245164) increasing the total number of units from 220 no. units to 248 no.

units. The permitted amendments related to blocks E, F, and G only. Following an application for Judicial Review to the courts, that decision was quashed by order of the High Court delivered on the 1st April 2022.

ABP Ref 305728-19: An Bord Pleanála made a decision by order dated 14th February 2020 to grant SHD application for alterations to previously permitted development Reg.Ref:2186/15 (PL29S.245164) increasing the total number of units from 220 no. units to 248 no. units. Following an application for Judicial Review to the courts, that decision was quashed by order of the High Court perfected on the 27th October 2020 and the case was remitted by that Court back to An Bord Pleanála to again determine the planning application. The application ref. ABP 308533-20 (see above) formed the subsequent assessment as required under that court order.

ABP Ref 301835-18 (P.A. Ref. Ref. 4040/17): In October 2018 the Board granted permission for amendments to previously permitted development Reg. Ref. 2186/15 (An Bord Pleanála Ref.: PL29S.245164) as amended by Reg. Ref. 2825/17 to include an addition floor level on Blocks E, F & G (total of 30 no. units) associated elevation changes, alteration to the basement parking provision, and removal of 2 apartment units in Block G to accommodate a crèche and all associated works. The application increased the overall number of units from 172 to 200.

ABP Ref 301600-18 (P.A. Ref. Ref. 3781/17): In October 2018 the Board granted permission for demolition of existing structures No's 115-119 Harold's Cross Road, construction of 2 no. apartment blocks (Blocks J1 and J2) comprising 23 no. residential units in total, extension to the basement level to provide for access from the proposed Block J2, provision of 160 No. car parking spaces and 226 no. bicycle parking spaces at basement level, and all associated siteworks. The proposal resulted in an overall increase in units from 156 no. to 179 no. units.

ABP Ref 300031-17 (P.A. Reg. Ref. 2825/17): In April 2018 the Board granted permission for modifications to previously permitted development under P. A. Reg. Ref. 2186/15 (ABP Ref. PL29S.245164) providing for increase of no. of apartment units from 156 to 172 via internal reconfiguration (Blocks E, F, and G) with balcony relocation, extra parking, bicycle spaces & all associated site works.

P.A. Reg. Ref 4544/17: In April 2018 DCC granted permission for amendments to Block D of the development permitted under Reg. Ref: 2186/15 (An Bord Pleanála Ref: PL29S.245164) to include the replacement of previously proposed office area (conditioned by An Bord Pleanála for community use under Condition 4 of An Bord Pleanála Ref: PL 29S.245164) and 3 no. previously permitted residential units with resident's amenity facilities comprising of: a concierge, residents lounge, multi-function room, meeting room and co-working spaces, gym with revised terrace at lower ground floor on northern elevation and associated facilities; manager's office; and all associated works (total tenant amenities floor space provided is c.396sqm). Minor elevational amendments are also proposed as part of this application. This application reduced the number of units in Block D from 13 no. to 10 no. resulting in an overall decrease from 156 no. to 153 no. residential units.

ABP Ref. PL29S.248916 (P.A. Reg. Ref. 2826/17): In June 2017 DCC decided to grant permission for amendments to the residential development permitted under Reg. Ref: 2186/15 (An Bord Pleanála Ref: PL29S.245164) to include the replacement of 3 no. residential units in Block D with resident's amenity facilities. The application was withdrawn in October 2017 before the subsequent appeal to the Board was determined.

ABP Ref. PL29S.245164 (P.A. Reg. Ref. 2186/15): In November 2015 the Board granted permission for development consisting of modifications to St Clare's Convent and Bethany Orphanage to provide residential and office accommodation, construction of 7 new residential blocks. Condition 2 required the omission of Block H (16 units). Condition 3 required the omission of Block J (24 units). Condition 4 required that the proposed office space in the chapel be replaced by a community

related purpose. The permitted development comprised a total of 156 no. residential units.

5.0 Policy Context

5.1. National Policy/Guidance

5.1.1 The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. NPO 4 of the NPF promotes attractive, well-designed liveable communities.

5.1.2 The **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)**, hereafter referred to as 'the Sustainable Residential Development Guidelines', sets out the key planning principles which should guide the assessment of planning applications for development in urban areas.

5.1.3 The **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)**, hereafter referred to as 'the Apartments Guidelines', sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; communal facilities; and car parking.

5.2. Development Plan

5.2.1 The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The northern (majority) portion of the site is zoned as Z12 'Institutional Land (Future Development Potential)', the objective for which is '*To ensure that existing environmental amenities are protected in the predominantly residential future use of these lands*'. The southern portion of the site, including the subject Block 8/J1, is zoned as Z1 'Sustainable Residential Neighbourhoods', the objective for which is '*To protect, provide and improve residential amenities*'. The vision for residential development in the city is one where a wide range of accommodation is available within sustainable communities where residential areas are within easy

reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport, and where adequate public transport provides good access to employment, the city centre and the key district centres.

5.2.2 Chapter 5 of the Plan outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity for existing and proposed properties.

5.2.3 Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA's, Conservation Areas and Conservation Zoning Objective Areas. The overall site includes St Clare's Convent (Block D), which is a Protected Structure (RPS Ref 3583). Policy CHC2 of the Plan aims to ensure that protected structures and their curtilage is protected.

5.2.4 Chapter 12 deals with 'Sustainable Communities and Neighbourhoods' and Chapter 16 sets out detailed policies and standards in respect of development proposals within the city, including 16.10 – Standards for Residential Accommodation.

5.3 Natural Heritage Designations

The Grand Canal Proposed Natural Heritage Area is located c. 350m to the north of the site. The nearest Natura 2000 sites are the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC, both located in Dublin Bay at a distance of c. 4.5km to the east of the site.

5.4. EIA Screening – Preliminary Examination

Having regard to the existing development on site, the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. First Party Appeal

The decision of DCC to refuse permission has been appealed by the applicant. The grounds of appeal can be summarised under the following headings:

Communal Amenity Space

- The total internal communal amenity space (413m²) would still be significantly greater than what was granted in the parent permission. It includes high-quality facilities in the Chapel building, which has been achieved through the removal of 3 no. apartment units.
- There is already ample communal open space (4,452m²) for the residents, which far exceeds the required space of 1,494m².
- The scheme includes 4,406m² of public open space.
- The proposal will result in greater movement around the site, thereby encouraging social interaction.
- The removal of unnecessary communal space will lead to reduced management costs for residents, an issue which is recognised in section 4.6 of the Apartments Guidelines.
- An accompanying letter from Hooke and McDonald (Management Company for the site) outlines that the resident amenities are exceptionally good in terms of quantity and quality.

Density

- The proposal will result in a slight density increase to 130 units per hectare, which is appropriate at this accessible location in accordance with national planning policy which encourages compact development.

Residential amenity for the proposed unit

- Blocks A and B already contain residential units fronting onto Harold's Cross Road, including a precedent for ground floor units.

- The proposal complies with the Apartments Guidelines standards for floorspace, storage, and private amenity space, as was confirmed in the DCC Planner's report.
- The Daylight and Sunlight assessment accompanying the original application fully demonstrates that access to light will not be a concern as the 2% target for the living/kitchen area is met.
- A Noise Survey prepared by Amplitude Acoustics accompanies the appeal. It is submitted that the report demonstrates that the unit will not be adversely impacted by the existing noise levels in the area, subject to the implementation of construction requirements.

Other Issues

- The inclusion of a winter garden results in a positive impact on the streetscape through the provision of a more cohesively designed façade.
- Ground floor residential units fronting onto streets are common in the wider city area, including older cottages and new apartment schemes.
- The additional bicycle space will satisfy any additional parking requirements.
- The proposed unit benefits from views of the mature park.

6.2. Observations

One observation has been received from Paul Walsh, 7 Leinster Park. The observation adds to the comments originally submitted to the planning authority and the additional points raised can be summarised as follows:

- The submission refers to the concerns raised in the DCC Planner's report.
- Regarding concerns about the applicant's claimed ADF value of 3.9%, the judgement in *Atlantic Diamond v An Bord Pleanala* [2021] IEHC 322 is relevant, where it confirmed the required ADF standard of 2% and a lack of procedure in the failure to obtain further information.
- The applicant has confirmed that the winter garden would not achieve adequate sunlight.

- It is obvious that the unit would suffer significant sound and vibration effects. The Amplitude Acoustics report (section 4.4) shows that the recommended noise levels have all been significantly breached and then goes on to make unvalidated assumptions about conditions and mitigation measures. The key conclusion is dependent on construction requirements which the applicant has not undertaken to carry out.
- The use of curtains as a mitigation measure conflicts with the Daylight and Sunlight report assumptions that no curtains or blinds would be used in determining ADF values.
- None of the tenants would have been made aware of the proposal or had the opportunity to comment on the application. Removing an amenity, without their knowledge, amounts to a misrepresentation, and it is untrue to say that the Block is currently unoccupied.
- The letting agent will make a financial gain from the additional rental and management fees.
- Delays in the availability of appeal documentation has prejudiced the observer's ability to make a proper submission.

6.3. **Prescribed Bodies**

None.

6.4 **Planning Authority Response**

None.

7.0 Assessment

7.1. Introduction

- 7.1.1. This case involves the change of use of an existing communal room within a residential apartment block to create an additional studio apartment. Residential use is a 'permissible use' in both the Z1 and Z12 zones and, therefore, there is no objection to the proposal from the perspective of Development Plan zoning objectives. The additional unit would have a negligible impact on density levels for the overall development of 220 units, and no additional floorspace is proposed that would impact on site coverage or plot ratio standards.
- 7.1.2. The case raises a number of issues, including those concerns outlined by the planning authority and the observer. However, having inspected the site and examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues for assessment in this appeal case are as follows:
- Residential amenity for the proposed unit
 - Daylight and Sunlight
 - Loss of communal amenity space.

7.2. Residential amenity for the proposed unit

- 7.2.1. The standard of residential amenity must be considered for both the proposed unit itself and in the wider context of the overall scheme. This will be considered with reference to the Apartment Guidelines under the headings below.

Mix of Units

- 7.2.2. SPPR 1 of the Apartments Guidelines outlines that developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios). The proposed unit would be the only studio apartment in the overall scheme of 221 units and would therefore represent less than 1% of the scheme. The applicant has proposed to make a financial contribution towards Part V social housing requirements and has no objection to the inclusion of a condition in this regard.

Floor areas and dimensions

- 7.2.3. The floor area of the proposed unit is 40m², which comfortably exceeds the minimum requirement of 37m² as per Appendix 1 of the Apartment Guidelines. The living / kitchen / bedspace area exceeds an area of 30m² and a width of 4 metres, and the minimum storage space of 3m² is provided. The internal ceiling height is c. 3.1m, which exceeds the minimum recommendations for ground floor units of 2.7m. Accordingly, I am satisfied that the proposal meets the quantitative standards as outlined in the Apartments Guidelines.

Aspect

- 7.2.4. The Apartments Guidelines (SPPR 4) require that a minimum of 33% dual aspect units be provided in central and accessible urban locations such as this. Given the minimal scale of the proposed development (i.e. 0.45% of the overall scheme), I do not consider that it has the potential to impact on the overall standard of dual-aspect provision in any meaningful way. The proposed unit is a single-aspect west-facing unit, which is stated to be acceptable in section 3.18 of the Guidelines. It also benefits from an attractive outlook over Harold's Cross Park and mature trees. Accordingly, I have no objection in relation to the proposed aspect.

Private Amenity Space

- 7.2.5. The minimum private amenity space requirement of 4m² is exceeded through the provision of a full height glazed winter garden of 5m². It would be directly accessed off the living area and the minimum depth exceeds 1.5m. The Guidelines state that glazed winter gardens may be provided in certain circumstances, and I acknowledge the proposed unit has a challenging relationship with the adjoining public street/road. However, I consider that the proposed glazed screening would provide improved privacy and amenity as compared to a typical garden/patio/terrace arrangement and would be an acceptable solution given the unique circumstances of the case. Furthermore, I would note that a similar ground floor balcony arrangement along Harold's Cross Road has already been permitted in Block B (Apt. No. 2) of the overall scheme.

Security & Accessibility

- 7.2.6. The unit is located in a prominent street-front location and the external openings to the unit would be overlooked by an active thoroughfare. Accordingly, I would not

have any objections in terms of security. Internal access would be provided via a shared foyer at ground level which is suitably and conveniently designed.

Noise

- 7.2.7. The appeal includes an Acoustic Design Statement from Amplitude Acoustics. It assesses the predicted noise impact of traffic based on a 6-day survey of existing noise levels. The noise monitoring results were based on levels at the external façade of the building and showed an average daytime L_{Aeq} dB of 71 and an average night-time L_{Aeq} dB of 66. The average highest night-time level was 84 (L_{AFmax} dB).
- 7.2.8. In order to achieve appropriate noise levels within the living spaces, the report aims to comply with BS 8233:2014. This involves noise criteria of <35 dB(A) for living rooms and bedrooms during the day, and <30 dB(A) for bedrooms during the night including individual noise events not exceeding 45 dB (L_{AFmax}) more than 10 times during the night. The report makes a number of assumptions regarding the internal fit-out and furnishings of the unit, which I consider to be reasonable. And while I note the observer's comments regarding the use of curtains, I do not consider that this alone is a critical sound insulation factor or that it would significantly affect light levels to the unit (as discussed further in section 7.3 of this report).
- 7.2.9. The report also includes façade mitigation measures for glazing and ventilation in order to comply with the internal noise criteria. I consider the measures to be suitable and reasonable. And while the observer claims that the applicant has not specifically undertaken to comply with these measures, I am satisfied that this matter can be clarified through a suitable condition.
- 7.2.10. For the winter garden area, the applicant's report highlights that BS 8233:2014 accepts that guideline values (50 – 55 dB $L_{Aeq, 16hr}$) are not always achievable. In such cases, development should be designed to achieve the lowest practicable levels. It contends that the winter garden has been provided with the lowest practicable noise levels and also highlights that the external amenity space to the rear of Block 8 would have an expected acceptable noise level of L_{den} of 55dB. I would accept that winter garden has been provided with the lowest practicable noise levels and that the occupants would also benefit from acceptable noise levels in other external amenity spaces, which is acceptable in this case.

Conclusions on residential amenity

- 7.2.11. Having regard to the foregoing, I do not consider tht the proposed additional unit would have any significant or unacceptable impacts on the overall mix of units in the scheme or the ratio of dual-aspect units. The proposed unit would exceed the quantitative size requirements of the Apartments Guidelines, would benefit from a private amenity space of acceptable size and quality, and would not be unacceptable affected by noise from the adjoining road/street. Accordingly, I am satisfied that the development would provide an acceptable standard of residential amenity for the prospective occupants. The issue of daylight/sunlight within the proposed unit is addressed in the following section of this report.

7.3. Daylight and Sunlight

Policy

- 7.3.1. The Apartments Guidelines (2020) highlight the importance of provision of acceptable levels of natural light in new apartment developments, which should be weighed up in the context of the overall quality of the design and layout of the scheme and the need to ensure an appropriate scale of urban residential development. It states that planning authorities '*should have regard*' to quantitative performance approaches to daylight provision outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision. The Guidelines also acknowledge that where an applicant cannot fully meet these daylight provisions, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.
- 7.3.2. The Development Plan also highlights the value of daylight and sunlight in 'Standards for Residential Accommodation' (Section 16.10) and states that development '*shall be guided by the principles of*' the BRE Guide. It states that a

sunlight/daylight analysis of the different units may be required and modifications to be put in place where appropriate.

- 7.3.3. At the outset I would highlight that the standards described in the BRE guidelines allow for flexibility in terms of their application, with paragraph 1.6 stating that *‘Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design’*. It notes that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate etc., and states that industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and arrangement of open space, and these factors will vary from urban locations to more suburban ones.

Information & assessment

- 7.3.4. The application includes a 2019 ‘Daylight Sunlight Report’ prepared by OCSC Consulting Engineers in relation to an earlier proposal to provide additional storey heights to Blocks E, F, and G of the overall scheme. It is accompanied by an updated study note from OCSC which assesses the impacts of the current proposal. Both reports have been prepared with reference to the BRE guide and BS 8206-2:2008.
- 7.3.5. I have considered the reports submitted by the applicant and have had regard to BRE 2009 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings - Code of practice for daylighting). I acknowledge the publication of the updated British Standard (BS EN 17037:2018 ‘Daylight in Buildings’), which replaced the 2008 BS in May 2019 (in the UK) but I consider that this updated guidance does not have a material bearing on the outcome of the assessment and that the relevant guidance documents remain those referred to in the Apartments Guidelines. I have carried out a site inspection and had regard to the interface between the proposed development and its surroundings, as well as the third-party observations which have raised concerns in relation to daylight and sunlight.

Daylight within the proposed unit

- 7.3.6. Section 2.1 of the BRE Guide outlines that daylight provision can be checked using the average daylight factor (ADF), which is the ratio of total daylight flux incident on the working plane to the area of the working plane, expressed as a percentage of the outdoor illuminance on a horizontal plane due to an unobstructed CIE standard overcast sky. The BRE and the BS guidance sets out minimum values for ADF that should be achieved, these are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. The BRE guide does not give any advice on the targets to be achieved within a combined living/dining/kitchen (LDK) area. However, BS guidance outlines that where one room serves more than one purpose, the minimum average daylight factor should be that for the room type with the highest value. For example, in a space which combines a living room and kitchen the minimum ADF should be 2%.
- 7.3.7. The applicant's study considers the predicted ADF to the proposed combined living / kitchen / bedspace area based on the recommended BS 8206 value of 2%. The study shows that the proposed space would have an ADF value of 3.9%, which significantly exceeds the required 2% and would result in excellent levels of daylight.
- 7.3.8. I note that the observer has queried several aspects of the applicant's assessment. He contends that the 3.9% ADF value is not credible when compared to the ADF values previously calculated for other south-facing apartments in this scheme. However, it should be noted that daylight assessment is different to sunlight assessment and is completed based on a standard CIE overcast sky. It is not, therefore, any way questionable that a west-facing unit would achieve a higher ADF value than a south-facing one. The ADF is calculated based on the specific design and conditions of the proposed unit and the obstructions that exist in the surrounding environment. The ADF values for other south-facing units in the scheme is not, therefore, a valid basis to question the applicant's assessment in this unique case.
- 7.3.9. The observer also questions the approach of ignoring the evergreen trees to the front of the proposed unit. I acknowledge that there are some evergreen trees in the park opposite the proposed unit. However, I would submit that the majority of trees are deciduous, including, most significantly, those closest to the unit along the eastern margin of the park. The evergreen species are relatively distant and sparse in comparison and do not form a dense belt of obstruction opposite the proposed

unit. I note that Appendix H2 of the BRE guide outlines that trees should sometimes be taken into account through a modified assessment. However, given the elevated ADF value of 3.9% and the limited obstruction caused by mainly sparse deciduous tree cover, I am satisfied that the proposed unit will receive adequate daylight and further assessment is not required.

7.3.10. I do not concur with the observer's opinion that opaque glazing or curtains/blinds will be required to protect the privacy of the unit. It is a common arrangement to have living room windows on a street like this and opaque glazing is not proposed or required. And while curtains/blinds may be used (as referenced in the applicant's noise report) at the discretion of the occupant, I would submit that they would most likely be used after daylight hours and would not significantly impact on daylight levels available to the unit.

7.3.11. Having regard to the forgoing, I consider that the applicant's ADF assessment of daylight within the proposed unit has been completed in accordance with the recommendations of the BRE Guide and BS 8206. I am satisfied that the unit will receive acceptable daylight levels and I have no objections in this regard.

Sunlight to the proposed apartments

7.3.12. Section 3.1 of the BRE guide highlights the main requirement for sunlight is in living rooms. In general, a dwelling will appear reasonable sunlit if at least one main window wall 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 (APSH), including at least 5% of APSH between 21st September and 21st March (WAPSH).

7.3.13. The applicant's assessment demonstrates that each of the three external openings to the unit will receive well in excess of the required APSH and WAPSH hours, with the values for all openings being 46.9% (APSH) and 16.1% (WAPSH). I acknowledge that Appendix H3 of the BRE guide suggests a modified assessment to account for the impact of trees. However, I again consider that this is not necessary given the elevated levels of sunlight achieved and the limited obstruction caused by the existing trees.

Sunlight to the winter garden

- 7.3.14. The applicant's assessment outlines that the BRE Guide does not contain standards for enclosed winter gardens. However, an assessment has been carried out based on BRE guidance that 50% of gardens and open spaces should receive in excess of 2 hours sunlight on the 21st March.
- 7.3.15. The study shows that 46% of the winter garden area would receive 2hrs of sunlight on the 21st March, thereby falling marginally short of the 50% recommendation. I consider that this is largely compliant with BRE standards and is acceptable, particularly given the stated need for flexibility in the application of such standards and the absence of a specific standard applicable to winter gardens such as this space. It should also be noted that the overall scheme benefits from a large provision of external amenity space, including an open space directly to the rear of Block 8 which achieves well in excess of the 50% sunlight standard.

Conclusions on Daylight/Sunlight

- 7.3.16. I again highlight that the standards outlined in the BRE guide allow for flexible interpretation in the context of many other design factors. And while the Apartments Guidelines state that regard should be had to the quantitative approaches as set out in guides like the BRE and BS 8206-2: 2008 publications, where it has been identified that a proposal does not fully meet the requirements of the daylight provisions and a rationale for alternative, compensatory design solutions has been set out, the Board can apply discretion having regard to local factors including site constraints and the need to secure wider planning objectives.
- 7.3.17. I have had regard to the 3rd party observation in this case, but I am satisfied that the applicant has carried out an assessment of impacts on the proposed development and that it has been competently prepared in accordance with the BRE guidance and methodology.
- 7.3.18. I have acknowledged that there will be a limited deficiency with sunlight to the proposed winter garden, but I consider that this is adequately compensated by the overall standard and quality of residential amenity provided, both in the individual unit affected and the overall scheme as a whole.

7.3.19. The proposed unit would facilitate the occupation of this prominent street level unit with a more active streetscape presence, which would assist with wider planning objectives such as urban design and completion of the urban regeneration of the overall site. Accordingly, I have no objections in relation to sunlight and daylight standards for the proposed development.

7.4. Loss of communal amenity space

7.4.1. Regarding communal open space requirements and the standards outlined in Appendix 1 of the Apartments Guidelines, the proposed unit would require an additional communal open space area of just 4m². However, the applicant points to an existing provision of 4,452m² communal open space, which already significantly exceeds the required standard of 1,494m² for the overall scheme. I would accept that this represents a high standard of communal open space, including an accessible space directly to the rear of Block 8, and I am satisfied that it is sufficient to cater for the proposed single additional unit. I also note that the overall scheme has a stated public open space provision of 4,406m², which exceeds the Development Plan requirement of 20% of the overall site area. This will remain unchanged as a result of the proposed development.

7.4.2. The impact of the proposed development is most relevant in the context of internal communal floorspace and amenity facilities. In this regard, I acknowledge that the planning history of the development has involved some confusion over the nature of the proposed development i.e. whether or not it is a Built-To-Rent (BTR) development. Section 5.5 of the Apartments Guidelines outlines that the provision of dedicated amenities and facilities specifically for residents is usually a characteristic element of BTR, and SPPR7(b) of the Guidelines requires the provision of such facilities and amenities as part of all BTR developments.

7.4.3. I note that the ongoing evolution of this scheme has included the addition of similar resident services and facilities. As outlined in section 4 of this report, this has included the removal of several proposed/permitted residential units to facilitate the following:

- Removal of 2 apartment units in Block G to accommodate a crèche (254m²) (ABP Ref. 301835-18 refers)

- The provision of 67m² of communal space in 2 rooms in Block 8/J1 (ABP Ref. 301600-18 refers).
- Replacement of office area and 3 no. residential units in Block D with a range of resident facilities and services (396m²) (P.A. Reg. Ref. 4544/17 refers).

7.4.4. It would appear that the nature and extent of these communal facilities, combined with the evolution of national policy and an increased prevalence of BTR schemes, contributed to a misinterpretation of the development as a BTR scheme. However, the Board ultimately clarified that it is not considered a BTR development and issued revised orders to remove any BTR-related conditions that applied to relevant permissions (ABP Refs. 301835 & 301600).

7.4.5. Notwithstanding that this is not a BTR scheme, section 4.0 of the Apartments Guidelines outlines guidance in relation to communal facilities in standard apartment developments. It states that communal rooms may be provided, particularly in larger developments. This may include laundry/drying facilities, community/meeting rooms, or a management/maintenance office, and may extend to childcare/gym uses that may be open to non-residents. However, it states that such facilities should not generally be imposed as requirements in the absence of proposals/agreement from the developer and notes the associated additional costs for residents. Regarding childcare facilities, the Guidelines state that requirements should be considered in the context of existing provision in the area, the emerging demographic profile, and the scale and mix of the proposed development (excluding 1-bed and studio type apartments).

7.4.6. Having regard to the foregoing, I consider that the overall development includes a high level and range of communal facilities (total of 717m²) for a standard apartment development. It is proposed to remove 50m² in the current application, resulting in a total of 667m² or a reduction of c. 7%. I note that the extent of communal floorspace permitted in the original parent permission was c. 162m² for 156 apartment units, which would be a comparatively lower rate of provision compared to the current proposal (i.e. 667m² (or 413m² excluding the creche) for 221 units).

7.4.7. I acknowledge that the majority of communal facilities would be concentrated in Block D, but I would also accept that this contributes to the creation of a social/community hub which would promote social integration in the overall scheme.

A community room would still be retained in Block 8/J1, and I consider that it is of sufficient size given the limited scale of the block. In this regard, having reviewed the planning permission for the subject Block 8/J1 (i.e. P.A. Reg. Ref. 3781/17, ABP Ref. 301600), it is clear that the subject space was included in response to the planning authority's further information request (November 2017) which raised concerns regarding the density of the overall scheme, as opposed to any specific requirement for community space to serve Block 8/J1 alone. As previously outlined, I am satisfied that the overall development has subsequently been adequately provided with significant additional community facilities in Block D and Block G (both of which were granted in 2018, i.e. after the planning authority's request of November 2017).

- 7.4.8. Having regard to the foregoing, I consider that the overall development would retain a sufficient range and extent of communal facilities. I do not consider that the loss of a community room of 50m² would significantly detract from the quality of residential amenity for occupants, either in relation to Block 8/J1 alone or in the overall scheme. Accordingly, I have no objections in this regard.

7.5. Other Issues

Visual Amenity and Built Heritage

- 7.5.1. The DCC decision to refuse permission included some concerns about the impact of the development on the streetscape. However, I consider that the proposed alterations are minimal and would be in keeping with the design and character of the existing building. Therefore, I would have no objections in relation to visual amenity or the impact of the development on the streetscape. I also acknowledge that the site includes a protected structure (St Clare's Convent). However, the proposed works are minimal in extent, are well distanced from the protected structure, and would not have any impact on the setting or integrity of the protected structure.

Transport

- 7.5.2. No additional car-parking is proposed, which I consider to be appropriate for a studio unit in an accessible location such as this. Therefore, there would be no likely additional loading or impacts on the existing vehicular traffic and parking capacity. An additional bicycle space is proposed at basement level to cater for the studio unit,

and I am satisfied that this would address the traffic and parking requirements associated with the proposed development.

Drainage

- 7.5.3. It is not proposed to alter the existing water, foul water, or surface water arrangements. I am satisfied that the impact of the additional unit on the existing capacity and arrangements will be negligible, and I have no objections in this regard.

Waste facilities

- 7.5.4. The application includes a review of the existing Operational Waste Management Strategy. It estimates that additional waste would amount to just c. 0.14m³ per week and confirms that this can be facilitated within the existing waste storage areas. I have no objections in this regard.

Fire Safety

- 7.5.5. The observer has raised concerns that the proposed development does not demonstrate compliance with fire safety regulations. I am satisfied that the issue of compliance with fire safety regulations will be evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.

Procedural Matters

- 7.5.6. The observer has raised concerns about inadequate access to documentation and inadequate time to prepare submissions at application and appeal stage. I am satisfied that the application and appeal process has complied with the relevant public notification and time periods for the making of submissions/observations. Any concerns in relation to the availability of planning authority documentation is not a matter for the consideration of the Board in this case.
- 7.5.7. Concerns have also been raised about notification of the proposed development to the occupants of the building and the associated impacts on the contractual expectations of the occupants. I consider that any such impacts would be a matter to be resolved between the relevant parties.

8.0 Appropriate Assessment Screening – Preliminary Examination

- 8.1.1. The application includes an ‘Appropriate Assessment Screening’ report prepared by Altamar Ltd. It concludes that the proposed development will not give rise to any significant effects to designated Natura 2000 sites.
- 8.1.2. I note that the nearest Natura 2000 sites are in the Dublin Bay area and include the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC (both c. 4.5km from the appeal site). I acknowledge that there are several other Natura 2000 sites in the wider surrounding area, including more distant sites within Dublin Bay as identified in the applicant’s AA Screening Report. There are no direct pathways between the appeal site and any of these Natura 2000 sites, although I acknowledge that there are indirect connections via surface water and foul water drainage.
- 8.1.3. The proposed development is of limited scale. It is significantly distanced from Natura 2000 sites and there is only minimal potential for indirect connections. Accordingly, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

9.0 Recommendation

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

10.0 Reasons and Considerations

Having regard to the design and layout of the proposed development, the character and pattern of development in the area, the planning history of the site, and the provisions of the Dublin City Council Development Plan 2016-2022, and the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Local Government and

Heritage in December, 2020, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable standard of residential amenity for the prospective occupants, would not seriously detract from the level of communal facilities and residential amenities afforded to the residents of the overall scheme, would not seriously injure the visual amenity or built heritage of the area, 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.

11.0 Conditions

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

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted under An Bord Pleanála appeal reference number 301600-18, planning register reference number 3781/17, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

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

Reason: In the interest of visual amenity.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

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

Reason: In the interest of public health.

6. The development shall comply with the noise mitigation measures outlined in the Acoustic Design Statement received by An Bord Pleanála with the appeal on the 13th day of January, 2021.

Reason: To protect the residential amenity of the proposed unit.

7. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and

been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

Stephen Ward
Senior Planning Inspector

16th September 2022