



An  
Bord  
Pleanála

## Inspector's Report ABP 313366-22

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<b>Development</b>	Amendments to permitted development including additional floors and apartment units.
<b>Location</b>	Site of the former Dublin Institute of Technology/Technological University Dublin (TUD) site, Kevin Street Lower, Dublin 8.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3150/22
<b>Applicant</b>	GA Development Dublin ICAV
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	Residents of Camden Row
<b>Observers</b>	1. Residents of New Bride Street 2. 250 Iveagh Trust Households
<b>Date of Site Inspection</b>	18/01/23
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

- 1.1. The site, which an stated area of 1.58 hectares, is that of the former Dublin Institute of Technology/Technological University Dublin at Kevin Street Lower Dublin 8. The site includes part of the Kevin Street Library site, Nos. 30 – 35 New Bride Street and warehouse buildings located on Church Lane South. The site also includes areas of public property with a letter of consent from Dublin City Council accompanying the application. The site has been cleared and development works have commenced.
- 1.2. It is bounded by Kevin Street Lower to the north, Church Street South, Liberty Lane and St. Kevin's Park to the east, Camden Row to the south and New Bride Street to the west.
- 1.3. The immediate vicinity is characterised by a variety of uses and building styles of varying ages. Camden Row and New Bride Street are largely characterised by one and two storey terraced dwellings interspersed with commercial buildings with the Iveagh Trust residential complex comprising of 5/6 storey buildings accessed from New Bride Street opposite the site to the west. More recent residential and commercial developments in the area have increased height, some of which are 7-8 storeys high. St. Kevin's Church and Graveyard accessed from Camden Row adjoins the site to the south west.

## 2.0 Proposed Development

- 2.1. The proposal entails:

Changes to development permitted under ref. ABP 309217 (2682/20) providing for an additional 27 Build to Rent units increasing the number from 299 to 326. The amendments include:

- 2.2. Block D

- Provision of 2 additional floors to Block D increasing its height by 3.6 metres from 4 – 14 storeys over lower ground level to 4 -16 storeys over lower ground level.
- Provision of 26 no. additional units increasing the number of BTR units from 181 to 207.

- Alterations to the layout at ground floor and upper levels resulting in reconfiguration of overall mix providing for 60 no. studios, 129 no. 1 bed and 18 no 2 beds.
- Reduction and relocation of communal roof terrace from 12<sup>th</sup> floor to 13<sup>th</sup> floor (106 sq.m.) and provision of additional communal roof terrace at 14<sup>th</sup> floor (105 sq.m.).
- Alteration to balcony arrangement including additional balconies on the eastern and western elevations and associated alterations to facades and elevation materials.
- Alterations to ancillary residents' amenities and support facilities including the reduction in the 'Park Lounge' resident amenity space at 4<sup>th</sup> floor level, addition of a new Park Lounge resident amenity space at 5<sup>th</sup> floor level and provision of additional storage room at lower ground mezzanine level.

### 2.3. Block E

- Provision of 1 additional floor to Block E increasing its height by 2.85 metres from 1-10 storeys over lower ground level to 1-11 storeys over lower ground level.
- Provision of 1 no. additional unit increasing the number of BTR units from 118 to 119.
- Alterations to the layout at ground floor and upper levels resulting in reconfiguration of overall mix providing for 65 no. studios, 27 no. 1 bed and 27 no 2 beds.
- Alterations and reduction in area of creche to 254 sq.m.
- Additional roof terrace of 380 sq.m. at 8<sup>th</sup> floor level.
- Alterations to balcony arrangement including additional balconies on the western elevation and associated alterations to facades and elevation materials.
- Relocation of ESB substation.

## 2.4. Other

- Reduction of 2 no. residential car parking spaces from 61 no. to 59 no. and reduction in the depth/levels by 800mm.
- Other ancillary works including PV panels at roof level and provision of additional bicycle parking at lower ground level.

## 2.5. The application is accompanied by:

- Planning and Environmental Report
- Housing Quality Assessment
- Townscape, Landscape and Visual Impact Assessment Addendum Report
- Sunlight and Daylight Assessment Addendum
- Architectural Design Report
- Landscape Statement
- Wind Microclimate Study
- Operational Waste Management Plan
- Sustainability and Energy Statement
- Architectural Heritage Impact Assessment
- Appropriate Assessment Screening Report
- Biodiversity Technical Note
- Part V Report
- Letter of consent from Dublin City Council to includes lands within its ownership

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

Grant permission for the above described development subject to 12 conditions. Of note:

Condition 4: Compliance with conditions attached to 2682/20 (ABP 309217).

Condition 5: Unit E-00-01 at ground level of Block E to be omitted and reinstated as part of the creche facility.

Condition 6: Double height windows on western side of proposed Park Lounge at 4<sup>th</sup> and 5<sup>th</sup> floor of Block D to have opaque glazing. Glass screens of 1.8 metres in height to surround the Park Lounge terrace and shall be opaque on the western and southern sides.

Condition 7 (b): 15 no. car share spaces for exclusive use of residential element to be included within the commercial car parking allocation located at basement level B01 or B02.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The **Planner's report** dated **23/03/22** notes:

- The proposed amendments are considered acceptable in principle and consistent with the Z5 zoning objective.
- The proposed increase in density to 517 units per hectare and increase in plot ratio are acceptable at this location.
- No issues arising with unit mix, dual aspect, floor to ceiling heights and lift/stair cores. No objection to changes to communal facilities/residential support facilities. It is considered that the proposal provides a good standard of amenities for future residents.
- Part of the creche is to be lost to provide for 2 no. additional units. The reduction in the size of the creche as approved has not been justified and could result in it being non-viable. Unit E-00-01 should be omitted and reinstated as part of the creche.
- Private and communal amenity spaces are considered acceptable.
- Height in excess of the (previous) development plan limit of 28 metres has been established.

- The additional floors result in a more articulated building at the higher levels. They have been designed in a subtle way. The additional floors to Block D are staggered and sit well within the approved building and do not add to the scale and bulk of the building.
- There will be some overshadowing of spaces within the scheme given the height and scale of the blocks proposed.
- No objection to the additional floors. They will not result in harm to the visual amenity of the area or add bulk to the scale of the approved buildings. In addition the daylight/sunlight report shows that the additional height is unlikely to result in harmful shadowing to neighbouring properties. The site is extensive and considered large enough to accommodate the increased height.
- The new units in Block D will not result in any increased overlooking of neighbouring properties over that approved. Staggered/angled windows and opaque windows are proposed at levels 1-3 on the western elevation of Block D to avoid overlooking of the rear gardens of properties on Camden Row. This is acceptable and is typical in city centres where there are existing, low scale properties and gardens adjacent to large scale development sites.
- At 4<sup>th</sup> and 5<sup>th</sup> levels the revisions provide for a new Park Lounge for residents with a large double height window on the west elevation. Obscure glazing to prevent overlooking of properties to the south on Camden Row is required by condition.
- In terms of daylighting and sunlighting the parent permission was assessed prior to the High Court Judgement *Atlantic Diamond Ltd. v. An Bord Pleanála* (2020 No.712JR). It would be unreasonable to assess the additional units under the 2% target.
- The analysis on the ground floor of both blocks concludes that 3 of the kitchen/living/dining areas fail to meet the ADF target of 1.5%. The fail rates are considered marginal.
- The other technical reports noted (summarised below).

A grant of permission subject to conditions recommended.

### 3.2.2. Other Technical Reports

**Engineering Department Drainage Division** in a report dated **09/02/22** has no objection subject to conditions.

**Transportation Planning Division** in a report dated **11/03/22** recommends the reallocation of car parking spaces by way of condition so as to retain the overall quantum of 61 no. residential spaces. No objection subject to conditions.

### 3.3. Prescribed Bodies

**Transport Infrastructure Ireland** in a letter dated **15/02/22** noted that the development falls within the section 49 scheme for Luas Cross City.

**An Taisce** in a letter dated **02/03/22** raises concerns about demolition waste, mass bulk and scale of proposal, impact on adjoining properties and impact on sunlighting and daylighting.

### 3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues are comparable to those cited in the 3<sup>rd</sup> party appeal and observations received and summarised in section 6 below.

## 4.0 Planning History

**ABP 309217 (2682/20)** – permission granted for demolition of existing buildings on the site and construction of a mixed use development in 5 no. blocks (Blocks A-E) ranging from 1 to 14 storeys over lower ground and basement levels.

- Blocks A, B and C provide for commercial floorspace,
- Blocks D and E provide for 299 BTR units ( 130 no. studios, 130 no. 1 bed and 39 no. 2 beds) with residential and support facilities.

28 no. conditions were attached to the decision.

Condition 2 requires alterations to Blocks C and D including

- (a) Glass screens of 1.8 metres in height to surround the proposed Park Lounge on the 4<sup>th</sup> floor of Block D. They shall be opaque on the western and southern sides.

**3565/22** – permission granted on 12/08/22 for amendments to Blocks A, B and C including extension of development boundary and amalgamation of Block C with permitted office scheme at No.23 Liberty Lane.

## 5.0 Policy Context

### 5.1. Development Plan

Following the planning authority's decision the Dublin City Development Plan, 2022, came into effect.

The site is within an area zoned Z5 City Centre.

The residential properties to the south-west of the site fronting onto Camden Row are zoned Z2 – residential neighbourhoods (Conservation Areas). The said terrace of buildings and St. Kevin's Church are protected structures.

#### ***Chapter 4 – Shape and Structure of the City***

Of note:

Policy SC10 – Density

Policy SC11 – Compact Growth

Policy SC12 – Housing Mix

Policy SC16 – Building Height Locations:-

To recognise the predominantly low rise character of Dublin City whilst also recognising the potential and need for increased height in appropriate locations including the city centre, Strategic Development Zones, Strategic Development Regeneration Areas, Key Urban Villages and other locations as identified in Appendix 3, provided that proposals ensure a balance with the reasonable protection of existing amenities and environmental sensitivities, protection of residential amenity and the established character of the area.



Policy SC17 – Building Height

Policy SC18 – Landmark/Tall Buildings

### ***Chapter 5 – Quality Housing and Sustainable Neighbourhoods***

Of note:

QHSN36 – High Quality Apartment Development

Policy QHSN38 – Housing and Apartment Mix

Policy QHSN40 - Build to Rent Accommodation -

There will be a general presumption against large scale residential developments (in excess of 100 units) which comprise of 100% BTR typology. To ensure there are opportunities for a sustainable mix of tenure and long term sustainable communities, a minimum of 60% of units within a development must be designed as standard apartments in accordance with the requirements set out in the Sustainable Urban Housing: Design Standards for New Apartments, December 2020.

There will be a presumption against the proliferation and over concentration of BTR development in any one area. In this regard, applications for BTR developments should be accompanied by an assessment of other permitted and proposed BTR developments within a 1km radius of the site to demonstrate:

- that the development would not result in the overconcentration of one housing tenure in a particular area and take into account the location of the proposed BTR.
- how the development supports housing need, particularly with regard to tenure, unit size and accessibility with particular reference to the Dublin City Council Housing Need and Demand Assessment.

Policy QHSN42 - To foster community both within a BTR scheme and to encourage its integration into the existing community, the applicant will be requested to provide an evidenced based analysis that the proposed resident support facilities are appropriate to the intended rental market having regard to the scale and location of the proposal. The applicant must also demonstrate how the BTR scheme would contribute to the sustainable development of the broader community and neighbourhood.

**Chapter 15 sets out the development standards for residential development.**

Table 15-1 sets out the documentation required to accompany residential schemes.

Table 15.4 – 10% minimum public open space within zone Z1.

Section 15.9 sets out apartment standards.

**Appendix 3 – Achieving Sustainable Compact Growth, Policy for Density and Building Height in the City.**

A comprehensive set of performance based criteria are detailed for the assessment of applications where significant urban intensification is proposed. These criteria are to ensure that a form and intensity of urban development is achieved that contributes to the overarching objectives of the plan to create sustainable communities and high quality places for people to live and work. The guidance is to ensure the highest standard of design and the protection of existing amenities and the natural and historical assets of the city. Guidance regarding landmark buildings is also set out.

Table 1 – Density Ranges

City Centre and Canal Belt - 100 – 250 units per hectare (net).

There will be a general presumption against schemes in excess of 300 units per hectare. Schemes in excess of this density will only be considered in exceptional circumstances where a compelling architectural and urban design rationale has been presented.

It is acknowledged that schemes of increased density are often coupled with buildings of increased height and scale. Where a scheme proposes buildings and density that are significantly higher and denser than the prevailing context, the performance criteria set out in Table 3 shall apply.

Table 2: Indicative Plot Ratio and Site Coverage

	Plot Ratio	Site Coverage
Central Area	2.5-3.0	60-90%

All proposals with significant increased height and density over the existing prevailing context must demonstrate full compliance with the performance criteria set out in Table 3.

The general principle is to support increased height and higher density schemes in the city centre, Strategic Development Regeneration Areas, Key Urban Villages, areas close to high frequency public transport and some other areas (as identified) considered as suitable for increased intensity of development.

## 5.2. **Natural Heritage Designations**

None in the vicinity

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The submission by Sheridan Woods on behalf of the 3rd party appellant, which is accompanied by a letter of support, can be summarised as follows:

#### 6.1.1. ***Building Height***

- The density will be increased from 474 units per hectare to 517 units per hectare and results in increased massing. Block D, measuring 52 metres in height, is monolithic when viewed from the east and west. Other buildings of comparable height (examples cited) benefit from contexts that can absorb higher buildings and may be defined as landmark structures.
- The proposed building height represents a further divergence from the pattern of development and distinctive urban form that characterises Dublin and this neighbourhood. The increase in height is inappropriate at this location.
- It will impact on the setting of wider historic urban neighbourhoods.
- The increase in height will set an undesirable precedent for tower elements being positioned randomly within the city fabric. It also sets a precedent for further, incremental increase in building height on the remainder of the site.
- There is no report from the Conservation Architects Department.

### 6.1.2. **Residential Development Standards**

- The modifications to the previously permitted development reduces the majority of the floor to ceiling heights from 3,250mm to 3,000mm. This is a retrograde measure and will result in dwellings of inferior quality compared to those permitted.
- The quality of the proposed units is already compromised in terms of size and lack of private balconies.
- The angled windows to Block D to reduce overlooking face north and will provide for a poor standard of residential amenity. There will be a perception of overlooking that undermines the privacy enjoyed by the occupants of Camden Row.
- The design of the proposed dwellings is unacceptably compromised. This is indicative of an inappropriate and poorly resolved site strategy.
- The proposal results in overdevelopment as highlighted by the compromises being proposed in relation to open space provision, floor to ceiling heights and morphing of the development to a building form that is alien to the character of the neighbourhood and the city.

### 6.1.3. **Open Space and Community Facilities**

- There is no increase in public open space. The quality of the proposed spaces is severely compromised. The courtyard space is compromised as a result of increased building height.
- The roof gardens are defined as being of a 'tolerable standard'. A 'tolerable' communal open space does not provide an adequate standard of development for future occupants.
- The proposal reduces the area of the proposed creche from 305 sq.m. to 255 sq.m. A condition requires the reinstatement of a dwelling in order to maintain the original creche size. There are concerns that the creche will not be viable and should be large so that it can support families and multi-generational living in the proposed development and in the wider area.

#### 6.1.4. **Public Realm**

- There will be increased level of overshadowing of permitted public realm.
- The number of entrances onto the new street connecting Camden Row to Kevin Street is limited to the community lounge and restaurant only. There are no dwelling entrances which will result in less pedestrian movement and reduced passive surveillance. This undermines the safety of the street, life and vibrancy.

#### 6.2. **Applicant Response**

The submission by John Spain Associates on behalf of the applicant, accompanied by supporting detail, can be summarised as follows:

##### 6.2.1. **Development form, Building Height and Visual Amenity**

- The marginal increase in height to achieve the additional floors is accommodated through the reduction and refinement of the floor to floor dimensions.
- The height of Block D that fronts onto Camden Row will be 700mm lower as a result of the floor to ceiling height changes.
- Visually there is a very subtle difference between that permitted and that proposed.
- In a number of views reassessed in the Townscape, Landscape and Visual Impact Assessment (TLVIA) addendum there are improvements to that permitted including refinements to the upper extents of Block D which result in a tall building of greater elegance and character with a more sculpted top adding visual interest in long distance views where it is visible, thereby enhancing legibility.
- The proposed materials complement the verticality of the residential blocks.
- The proposal is consistent with SPPR 3 and the development management criteria of the Building Height Guidelines.

- The protected structures in the vicinity remain unaffected by the proposed amendments. Reference made to Architectural Heritage Impact Assessment prepared.

### **6.2.2. Residential Development Standards**

- Whilst the proposed amendments reduce the floor to ceiling dimensions they continue to meet and exceed the requirements of SPPR5 of the Apartment Guidelines.
- The Daylight and Sunlight Assessment illustrates that the residential units will continue to achieve a good level of daylight generally in compliance with the BRE guidelines and provides for similar results to the permitted scheme. Therefore, it will not be adversely impacted by the reduced floor to ceiling heights.
- SPPR8(ii) allows flexibility in terms of storage and private amenity space. The proposal entails additional private amenity space where possible. It was not appropriate to provide balconies for all units due to impact on properties to the west and south and the need to respond to the existing building line. The proposal complies with SPPR 8(ii) in providing compensatory measures in terms of community support facilities and amenities and communal open space.
- The proposed units meet or exceed the minimum floor area standards as set out in SPPR3.
- The scheme provides for public open space and public realm improvement equating to 2703 sq.m. which is approx. 15% of the site under the applicant's control which exceeds the development plan requirement of 10%. The scheme also benefits from St. Kevin's Park.
- The proposed amendments provide for increased communal open space. At 2,222 sq.m. it exceeds the apartment guidelines requirements of 1820 sq.m. and retains the ratio of 5.7 sq.m. per unit.
- As per the Wind Microclimate Study the roof terraces of Block D are marginally affected by the additional massing. The roof terrace of Block E is less influenced by the proposed additional height. The study confirms that the

wind conditions in the majority of the terraces are likely to be tolerable and that the development continues to be an appropriate environment for pedestrians and occupants as the proposed amendments will produce similar wind conditions with the adoption of suitable wind mitigation, where necessary, as per the permitted scheme.

- In terms of daylighting and sunlighting the communal open space at surface level is not compromised by the additional building height.
- There would be no material change to the impacts envisaged to the public realm including St. Kevin's Park ( report attached in Appendix 4).
- The permitted development did not include unit entrances directly onto the street connecting Kevin Street Lower to Camden Row. The scheme retains a high quality approach to the streetscape environment and public realm interaction.

#### **6.2.3. Precedent**

- It is not considered that the proposed amendments would set an undesirable precedent for additional height.

#### **6.2.4. Community Facilities**

- Whilst the reduced creche is considered sufficient to accommodate the demand for childcare places arising from the development, condition 2 attached to the planning authority's decision requires the omission of one residential unit and the amalgamation into the creche unit. This would give a floor area of 304 sq.m. (see appendix 3). This would provide for 60 childcare spaces. The condition is accepted by the applicant. The potential demand of the scheme, as amended, would be 12 no. places.

#### **6.2.5. Impact on Camden Row**

- The blocks remain in line with the permitted building line and do not step forward towards the dwellings on Camden Row, thereby retaining suitable separation distances and a similar relationship as permitted.
- Angled, recessed windows are proposed to help divert views from the apartments away from neighbouring units. The Sunlight and Daylight

Assessment concludes that the development has excellent average ADF. Living rooms also comply with BRE sunlight requirements both Annual APSH and Winter WPSH.

- The proposed amendments provide an appropriate transition and there will be no material impact on residential amenity in terms of overlooking or privacy of any significance when compared to the permitted development.

### 6.3. Planning Authority Response

None received.

### 6.4. Observations

Observations have been received from:

1. Residents of New Bride Street
2. 250 Iveagh Trust Households

The submissions can be summarised as follows:

- The proposal constitutes a material contravention of the permission granted under ref. ABP 309217-21.
- It is queried why the proposed height and increase in scale for Blocks D and E was not applied for in the first instance.
- It would set a precedent for further, incremental increase in building height on the remainder of the site.
- The additional floors will significantly add to the massing and density of the development.
- It will increase the existing high density in the area.
- It will impact on light and sunlight.
- The blocks are to the east and will particularly impact on the residents of the eastern side of New Bride Street that back onto the site.
- Impact on the Iveagh Trust estate has not been considered. No assessment of impact on sunlighting and daylighting.



- European Standard EN 17037 with respect to daylight and sunlight in buildings was adopted in Ireland in January 2019. BRE 2009 is under review and is not fit for purpose. The additional floors and amended layouts provide poor internal levels of sunlight and daylight as well as further affecting the receiving environment in terms of overshadowing and overlooking. No revised information has been provided to address this.
- The development is already higher than any buildings in the area and the additional floors should not warrant a further lowering of amenity standards within the scheme and in neighbouring properties. The proposed amended development fails a number of tests for ADF even at the lower 1.5% level.
- Adjoining properties will be overlooked and will be adversely impacted in terms of sunlighting and overshadowing. Adding additional floors will exacerbate this. The proposal is materially different from the previous college use.
- The permitted density is excessive. The proposal will increase this by 9%. It far exceeds densities in other European cities. There is no corresponding increase in public realm or public and communal open space. The further erosion of the development standards in the building heights guidelines will seriously injure both the prospective and existing residents.
- The increased height and density will have a negative impact on protected structures in the vicinity and on St. Kevin's Church pocket park.

## 6.5. Further Responses

The applicant's response to the 3<sup>rd</sup> party appeal was circulated for comment.

A submission from Sheridan Woods on behalf of the appellants, accompanied by supporting detail was received. In addition to reiterating points made in its appeal submission the following are noted:

- The increase in height adds to the overbearing impact on the appellants' amenities. Block D is increased to 6 floors immediately to the east of their gardens. This increase should be refused in particular. If the Board is minded to grant permission it is requested that the height of Block D at this

location adjacent to the rear gardens of Camden Row is reconsidered from 1<sup>st</sup> principles. It is requested that the increased height from 5 to 6 floors not be permitted. It should be reduced to 4 floors or omitted. Conditions requiring the reconsideration of the internal layout and proposed uses facing their properties so that there is no overlooking/perceived overlooking are also recommended

- The angled windows give a perception of overlooking that undermines the privacy enjoyed by the residents. It is not clear whether the windows serving the lounge area are fixed or opaque. They will generate further overlooking. The proposed lounge/communal space uses have the potential to generate unacceptable noise levels immediately adjacent to the appellants' properties. This modified configuration and arrangement should not be permitted.
- There are precedents including Gascoigne Court at the junction of Camden Row and Heytesbury Street where a design solution was arrived at that does not require windows overlooking properties. There are more appropriate design solutions that could be achieved that facilitate increased density whilst protecting adjoining amenities.
- A buffer zone separating the development from the appellants' properties as put forward by the appellants as an option in the original application could now be considered so as to minimise or omit the enclosing impact being created to the east of their gardens.
- Ongoing impact of site investigations on the integrity of the fabric of No.25 Camden Row exemplifies the vulnerability of properties and how their amenity is being compromised by the site development.

## 7.0 Assessment

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

- Preliminary matters
- Development Context
- Zoning Provisions, Density, Plot Ratio and Site Coverage
- Residential Mix
- Prospective Amenities
- Amenities of Adjoining Property
- Visual Amenity
- Environmental Impact Assessment
- Appropriate Assessment

### 7.1. Preliminary matters

- 7.1.1. Since the planning authority's adjudication of the application the Dublin City Development Plan 2022 came into effect and is the document to which regard will be had in this assessment. There are material differences between the previous and current plans with specific note had to the policy and guidance on building height, densities and residential unit mix. I note that the new plan would have been reviewed by the OPR to ensure its compliance with national and regional policy.
- 7.1.2. I note the amendments to the Sustainable Urban housing – Design Standards for New Apartments - Guidelines for Planning Authorities which came into effect 22/12/21. The effect of the amendment is that Build to Rent (BTR) is no longer a distinct class of development for planning purposes and that planning standards for BTR developments are required to be the same as those for all other generally permissible apartment types. The provisions arising from the amendments do not apply to the current proposal as it was within the planning system prior to 21/12/21.

## 7.2. Development Context

- 7.2.1. The permitted scheme under ref. ABP 309217 provides for a mixed use development in 5 no. blocks (Blocks A-E) ranging from 1 to 14 storeys over lower ground and basement levels. Blocks A, B and C provide for commercial floorspace and Blocks D and E provide for 299 BTR units with residential and support facilities. Amendments to Blocks A, B and C including extension of the development boundary allowing for the amalgamation of Block C with a permitted office scheme at No.23 Liberty Lane, was granted under ref. no. 3565/22 on 12/08/22.
- 7.2.2. The current proposal pertains to the residential component of the scheme contained in Blocks D and E, only. The gross increase in floor area equates to 2,953 sq.m. resulting in a gross residential floor area of 24,311 sq.m. and an overall gross floor area of 85,765.85 sq.m.
- 7.2.3. The following table provides a comparative analysis between the permitted scheme and that proposed.

	<b>Permitted</b>	<b>Proposed</b>
Application Site Area	1.58 ha.	1.58 ha.
No. residential units	299 BTR	326 BTR
Mix	131 studios (44%) 134 1 bed (45%) 34 no. 2 bed (11%)	125 studios (38%) 156 1 bed (48%) 45 no. 2 bed (14%)
Plot Ratio	4.4	4.5
Site Coverage	54%	55%
Density	474 uph	517 uph
Block D	Min Height 13.4m Max Height 47.9m Part 4 to 14 storeys (above lower grd. levels)	Min Height 12.7m Max. Height 51.7m Part 4 to 16 storeys (above lower grd. levels)  <b>Increase of 3.8 metres</b>

Block E	Min Height 3.95m Max Height 32.15m Part 1 to part 10 storeys (over lower grd. levels)	Min Height 3.75m Max Height 35m Part 1 to part 11 storeys (over lower grd. levels) <b>Increase of 2.85 metres</b>
Dual Aspect	101 no. units (34%)	110 no. units (34%)
Car parking	61 no.	59 no.
Cycle Parking	700 no.	750 no.
Residential Support Amenities	1, 703 sq.m./5.7 per unit	1,869 sq.m./5.7 per unit
Communal Open Space	1,600 sq.m. ground level Block D – Terraces 4 <sup>th</sup> floor -235 sq.m. 12 <sup>th</sup> floor – 250 sq.m.	1,400 sq.m. ground level Block D – Terraces 4 <sup>th</sup> floor – 231 sq.m. 13 <sup>th</sup> floor – 106 sq.m. 14 <sup>th</sup> floor – 105 sq.m. Block E – Terrace 8 <sup>th</sup> floor – 380 sq.m
Private Amenity Space	96 no. units with balcony/terrace/patio	136 no units with balcony/terrace/patio

### 7.3. Zoning Provisions, Density, Plot Ratio and Site Coverage

- 7.3.1. The zoning provisions for the site are essentially the same as applied under the previous development which was in effect when the application for the development was being assessed, namely Z5 – City Centre, the objective being to consolidate and facilitate the development of the city centre area and to identify, reinforce, strengthen and protect its civic design character and dignity.
- 7.3.2. In terms of density the general principle as espoused in the development plan is to support increased height and higher density schemes in the city centre, Strategic

Development Regeneration Areas, Key Urban Villages, areas close to high frequency public transport and in other areas (as identified). However the plan differs from its predecessor in that acceptable ranges for density within specified areas are detailed. The previous development plan did not delineate any upper limits. As per Table 1 of Appendix 3 a density range of between 100-250 units per hectare (net) is detailed for the city centre and canal belt. The plan also states that there will be a general presumption against schemes with a density in excess of 300 units per hectare. Schemes in excess of this will only be considered in exceptional circumstances where a compelling architectural and urban design rationale has been presented.

- 7.3.3. The scheme as permitted has a density of 474 units per hectare. The proposed increase in residential units by 27 to 326 would increase the density to 517 units per hectare which equates to an 8% increase over that permitted. This would be over twice the upper limit of what is acceptable in such a zone and materially in excess of the 300 unit per hectare ceiling.
- 7.3.4. Whilst it could be argued that the additional units is small in number relative to that permitted, I submit that due weight is required to be had to the incremental and cumulative impact of the proposal in the context of the new policy framework. On this basis I consider that the proposed amendments would, therefore, contravene the provisions of the current development plan in terms of the density provisions. I do not consider that exceptional circumstances apply in this instance in terms of compelling architectural and urban design to justify the exceedance of the upper 300 unit limit further.
- 7.3.5. As this constitutes a new issue the Board may wish to circulate same to the parties to the appeal for comment.
- 7.3.6. For the Board's information the permitted plot ratio at 4.4 exceeded the indicative range of 2.5-3.0 as set out in the development plan applicable at time of assessment. The current development stipulates the same indicative range. The proposed amendments would result in a marginal increase in plot ratio to 4.5. The site coverage also increases marginally to 55% and remains below the 60-90% range as delineated for such central areas.

#### **7.4. Residential Mix**

- 7.4.1. The current development plan against which the application is required to be assessed includes specific considerations in terms of BTR schemes as set out in policies QNSN 40 – 42. There is now a general presumption against large scale residential developments (in excess of 100 units) which comprise of 100% BTR typology. To ensure there are opportunities for a sustainable mix of tenure and long term sustainable communities, a minimum of 60% of units within a development must be designed as standard apartments in accordance with the requirements set out in the Sustainable Urban Housing: Design Standards for New Apartments, December 2020.
- 7.4.2. As noted previously the planning authority would have had regard to national policy and guidance in drawing up the new development plan including the 2020 apartment guidelines and the provisions for BTR development therein. I would, again, reiterate the fact that the said plan would have been reviewed by the OPR to ensure its compliance with said national and regional policy.
- 7.4.3. The scheme as permitted provides for 299 BTR units. The addition of a further 27 no. represents a 9% increase in this housing typology. Whilst this may not be considered to be a material increase, it nonetheless would compound the concentration of BTR units on this site and, in my opinion, would contravene the new development plan in terms of advocating for a sustainable mix of tenure. In addition, policy QNSN 41 requires applications for BTR schemes to demonstrate how the development supports housing need, particularly with regard to tenure, unit size and accessibility and that there is not an over-concentration of Build to Rent Accommodation within an area (to include a map showing all such facilities within a 1km radius of a proposal). Such detail has not been provided.
- 7.4.4. As the dwelling unit mix concerns constitute a new issue the Board may wish to circulate same to the parties to the appeal for comment.

#### **7.5. Prospective Amenities**

- 7.5.1. Whilst the amendments to the apartment guidelines which came into effect on 22/12/22 are not applicable to the subject development the provisions of policy QNSN 40 which requires that 60% of all BTR schemes be designed as standard

apartments in accordance with the requirements set out in the Sustainable Urban Housing: Design Standards for New Apartments, December 2022 is relevant.

7.5.2. I also refer the Board to section 15.10.1 of the current City Development plan which sets out the development management requirements for BTR schemes. Whilst the derogations allowed for in SPPR8 in terms of storage space, private amenity space and communal space are noted, there is a general presumption against excessive relaxation of these requirements, in particular, private amenity space.

*Compliance with Quantitative Standards*

7.5.3. Due to the reconfiguration of the internal floor arrangements which has had an impact on the overall unit mix in the two blocks it is not possible to 'ringfence' the additional 27 no. units against which the criteria can be applied

7.5.4. In the context of the above strictures I note the following for the Board's information:

- the number of studio and one bed units as permitted account for 89% of the 299 units. The proposal amendments would reduce this percentage to 85% (of 326 Units). The requirement of SPPR1 of the guidelines that no more than 50% of the unit mix comprising of such units is waived in BTR schemes.
- The apartment floor areas meet, with many exceeding the minimum floor areas as set out in SPPR3. All units provide for the minimum storage requirements as recommended in Appendix 1.
- The number of dual aspect units at 34% exceeds the 33% minimum for such centrally located sites as per SPPR4.
- In order to allow for the increase in floors, whilst limiting the increase in height, the floor to ceiling heights have been reduced. In Block D the ground floor units have a floor to ceiling height of 3.9 metres with upper floors ranging from 2.55 metres to 2.75 metres. For Block E the ground floor apartments will have a floor to ceiling height of 3.35 metres with the upper floors ranging from 3 to 3.25 metres. These exceed the SPPR 5 requirements of the guidelines which stipulate 2.7 metres at ground floor and 2.4 metres on upper floors.
- The SPPR 6 requirement of a maximum of 12 apartments per floor per core is waived by SPPR8 for BTR schemes. The lower floors all exceed this figure.



The units on the additional floors to the Blocks subject of this application do not.

- The minimum private open space requirements which would be applicable to all apartment units as set out in Appendix 1 is also waived by SPPR 8. The reconfiguration of the units within the blocks, in addition to the additional units, allow for 136 units to be served by balcony/terrace/patio which is an increase of 40 from that as permitted (96 no. units). This equates to approx. 42% of the units.
- The communal open space has been reconfigured with the relocation of the 12<sup>th</sup> floor communal roof terrace to the 13<sup>th</sup> floor and reduction in its size to 106 sq.m. An additional communal roof terrace is to be provided at 14<sup>th</sup> floor (105 sq.m.). In Block E an additional roof terrace of 380 sq.m. is to be provided at 8<sup>th</sup> floor level. In addition alterations to ancillary residents' amenities and support facilities are proposed including the repositioning and reduction in the Park Lounge resident amenity space at 4<sup>th</sup> floor of Block D and addition of a new Park Lounge resident amenity space at 5<sup>th</sup> floor level of Block D. The communal floor space at 5.7 sq.m. per unit is the same as that in the permitted scheme. Additional storage room at lower ground mezzanine level is also proposed.

7.5.5. A Wind Microclimate Study accompanies the application assessing the communal terraces proposed to each block. The report states that the roof terraces of Block D are marginally affected by the proposed amendments and additional massing. The wind conditions are generally less desirable for seated occupants and more frequently tolerable for standing occupants. The roof terrace is less influenced by the additional height with the majority of the space tolerable for its intended use. It concludes that the proposed amendments will produce similar wind conditions with the adoption of suitable wind mitigation where necessary as per the permitted scheme.

7.5.6. The Board is advised that the public open space provisions remain unaltered from that permitted. The scheme provides for public open space and public realm improvements equating to 2703 sq.m. which is approx. 15% of the site under the

applicant's control which exceeds the development plan requirement of 10%. The scheme benefits from St. Kevin's Park.

- 7.5.7. The creche as permitted is proposed to be reduced in size with 2 no. additional residential units to be provided instead. I would concur with the planning authority's assessment that the reduction in the floorspace has not been adequately justified and that the omission of one of the additional units and the amalgamation of the floor area into the creche is appropriate. Should the Board be disposed to a favourable decision this could be addressed by way of condition.
- 7.5.8. The proposed ground floor layouts of the blocks and interface with the new street connecting Camden Row to Kevin Street are comparable to those permitted in terms of orientation of uses and number of entrances.
- 7.5.9. On the basis of the above I submit that the additional units, in addition to the communal open space and ancillary residents amenities. would meet the requirements of the Apartment Guidelines as applicable for BTR.

#### *Daylighting and Sunlighting*

- 7.5.10. The assessment of daylight, sunlight and overshadowing relies on the standards in the following documents:
- BRE Report "Site Layout Planning for Daylight and Sunlight"; and
  - British Standard BS 8206-2:2008 Lighting for Buildings – Part 2 Code of Practice for Daylighting.
- 7.5.11. I note that section 6.6 of the relevant Section 28 Guidelines Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2020, which postdate the European Standards EN 17037 (published in 2018), states that planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like (*my emphasis*) 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'. In addition section 3.2 of the Urban Development and Building Heights Guidelines for Planning Authorities December 2018 states that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like those referenced above.

- 7.5.12. I note that subsequent to the preparation of the applicant's report a revised Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (BRE209 2022) was issued in June 2022. Notwithstanding, I consider that appropriate and reasonable regard is had by the applicant to the above referenced statutory guidelines and the advice detailed therein.
- 7.5.13. As noted in section 1.6 of the BRE document the detail is advisory, it is not mandatory. Although it gives numerical guidelines it recommends that they be interpreted flexibly since natural lighting is only one of many factors in site layout design. The guidelines also note that in a historic city centre, or in an area with modern high rise buildings, a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings.
- 7.5.14. A Sunlight, Daylight and Shadow Assessment Addendum report accompanies the application. In terms of ADF regard is had to BRE Guidance with reference to BS8206 – Part 2 which set out the minimum values that should be achieved. These are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Section 2.1.14 of the BRE Guidelines notes that non-daylight internal kitchens should be avoided where possible, especially if the kitchen is used as a dining area too. If the layout means that a small, internal galley-type kitchen is inevitable, it should be directly linked to a well daylight living room. This guidance does not give any advice on the targets to be achieved within a combined kitchen/living/dining layout. It does however, state that where a room serves a dual purpose the higher ADF value should be applied. I note the High Court Judgement of Atlantic Diamond Ltd. v. An Bord Pleanala (2020 No.712JR) made in May 2021 wherein a 2% ADF was adjudicated to more appropriately apply to apartment layouts that include a kitchen/living/dining room.
- 7.5.15. Arising from the internal reconfiguration of the blocks as permitted the units at ground, 1<sup>st</sup> floor and 5<sup>th</sup> floor were re-assessed. The analysis is comparable to that conducted for the original application in that a 1.5% ADF factor for living/kitchen/dining rooms was applied on the basis that the figure of 2% is considered more appropriate to a traditional house layout and room usage. In addition a factor of 1% was applied for the studio units. In view of the development as permitted on the site and its city centre location the figures applied are

acceptable. I am satisfied as to the veracity of the results in so far as is practical and that the units assessed within the study represent the worst case scenario.

- 7.5.16. The results of the reassessment are comparable to those of the permitted scheme. Of the 25 no. 1 and 2 bed units on the ground and 1st floor of Block D, 3 no. units fail to meet the 1.5% ADF with the majority exceeding the 2% ADF. Of the 38 no. 1 and 2 bed units on the ground and 1<sup>st</sup> floor of Block E, 4 no. fail to meet the 1.5% ADF. As can be extrapolated from the figures provided for the 5<sup>th</sup> floor of both blocks all units exceed the 1.5% minimum with many exceeding 2% ADF. The units on the additional floors proposed as part of this development were assessed against the 2% ADF figure, all of which exceed same.
- 7.5.17. On the basis of the above it is reasonable to conclude that the reconfigured units will attain a comparable standard of daylight as that of the permitted development with access to skylight increasing with height.

#### **7.6. Amenities of Adjoining Property**

- 7.6.1. The site is bounded by residential properties fronting onto Camden Row and Lower Bride Street to the south-west corner. The properties on Camden Row are protected structures.
- 7.6.2. The Sunlight, Daylight and Shadow Assessment Addendum report accompanying the application assesses the impact of the proposal on the adjoining properties in terms of Vertical Sky Component (VSC) and Annual Probable Sunlight Hours (APSH & WPSH).
- 7.6.3. In terms of VSC a target of 18% comparable to that adopted and accepted as appropriate for the permitted development is used. 98% of the windows pass the VSC skylight requirements which represents no change from the previous assessment. 1 no. window, only, to the rear of dwelling that fronts onto Camden Row is below this value which also failed to meet the criteria previously. In terms of APSH all windows meet the annual check, again representing no change from the previous assessment. 3 no. windows across Kevin Street Lower, behind vegetation fail to meet the WPSH winter requirement. The impact remains unchanged from the permitted development assessment. In terms of overshadowing all amenity spaces to dwellings and St. Kevin's Park adjoining receive the minimum of 2 hours on the

21<sup>st</sup> March or do not breach the 0.8 times its former value limit and represents no change from the previous assessment.

- 7.6.4. The Iveagh Trust housing complex is located to the west of, and on the opposite side of Lower Bride Street. Blocks D and E are to the south-east of, and do not directly front onto the complex. In view of the site layout the proposed height increases in the blocks would not impact on same in terms of daylighting or sunlighting.
- 7.6.5. Block D will continue to present as 4 storey to Camden Row albeit with at a marginally lower height than permitted due to the reduction in the floor to ceiling heights. The proposed internal alterations entail the relocation of the 'Park Lounge' at 4<sup>th</sup> floor level with additional provision in a new 5<sup>th</sup> floor element immediately above. This would increase the height of this section of the building from 18.225 metres to 19.925 metres. The additional floor area at 5<sup>th</sup> floor level would have been assessed in terms of daylighting and sunlighting with no impact arising.
- 7.6.6. The layout as permitted at the southern end of Block D entails a stair core along the southern boundary from which overlooking over the rear of the properties immediately adjoining would have been limited and where opaque glazing would have addressed any concerns. The repositioning of the communal room and providing same over two floors certainly gives rise to the increased potential of overlooking than has been permitted and, in my opinion, does not represent a positive amendment. Should the Board be disposed to a positive decision a condition requiring the windows serving the spaces at both 4<sup>th</sup> and 5<sup>th</sup> floors be fixed and fitted with opaque glazing is recommended. The terrace at 4<sup>th</sup> floor level, as amended, is largely comparable to that permitted wherein the Board required glass screens of 1.8 metres in height to surround the terrace which are to be opaque on the western and southern sides (condition 2).
- 7.6.7. I note that arising from the alterations to the internal configuration and positioning of residential units at the southern end of Block D, angled window openings are proposed to 3 no. units on the 1<sup>st</sup> to 3<sup>rd</sup> floors to address the potential for overlooking into the adjoining properties in Camden Row. Such a design solution is not uncommon in such city centre sites and is acceptable.
- 7.6.8. In the context of the permitted development and the proposed amendments with no alteration to the buildings' footprints I do not consider that there is justification to

consider the acceptability or otherwise of the proposal from first principles or imposition of a buffer zone to the properties on Camden Row as put forward by the agent for the appellants. I submit that subject to conditions to address overlooking I conclude that the proposed amendments would not give rise to a material impact on the residential amenities of adjoining property relative to that arising from the permitted development on site.

- 7.6.9. The reference in the appellants' submission to the impact of site investigations on the integrity of the fabric of No.25 Camden Row highlighting the vulnerability of properties is noted. Structural concerns arising from the construction phase of the permitted development is more appropriately raised with the planning authority and the site developer.

## **7.7. Visual Impact**

- 7.7.1. The applicant is accompanied by a Townscape, Landscape and Visual Impact Addendum Report. I note that the permitted development was subject of an assessment against the performance criteria set out in the Guidelines for Building Height and was deemed to be acceptable.
- 7.7.2. Block D, as permitted, ranges between 13.4 metres (4 storeys) fronting onto Camden Row stepping back and up to 47.9 metres (14 storeys). The proposed amendments including the reduction in the floor to ceiling height will result in the 4 storey height onto Camden Street reducing by 700mm to 12.7 metres with the additional 2 storeys at 15<sup>th</sup> and 16<sup>th</sup> floors increasing the height to 51.7 metres. The overall increase is 3.8 metres. I note that as per the current development plan 'landmark' buildings are considered to be 50 metres plus.
- 7.7.3. Block E, as permitted, ranges in height from 1 storey at 3.95 metres stepping up and back from the southern boundary to 10 storeys with a height of 32.15 metres. The proposed amendments including reduction in the floor to ceiling height would reduce the single storey element along the southern boundary to Camden Row to 3.75 metres with the additional floor (11 storeys) increasing the height to 35 metres an increase of 2.85 metres.
- 7.7.4. I submit that in the context of the height of the buildings permitted the increases proposed would not result in a material impact on the views assessed as to warrant a refusal of permission.

7.7.5. I would also submit that the increased height will not have a material impact on protected structures in the vicinity or on St. Kevin's Church pocket park relative to that already permitted.

## 7.8. **Environmental Impact Assessment**

7.8.1. The parent permission was accompanied by an EIAR and the Board carried out an EIA.

7.8.2. I refer to Part 2, Schedule 5 Planning and Planning Regulations, 2001, as amended. Of note:

Class 13, Changes, extensions, development and testing

(a) Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) would:

(i) Result in the development being of class listed in Part 1 or paragraphs 1 to 12 of Part 2 of the Schedule, and

(ii) Result in an increase in size greater than 25% or an amount equate to 50% of the appropriate threshold.

whichever is the greater.

7.8.3. Having regard to the thresholds for infrastructure development as set out in Class 10 the site area remains the same as that previously assessed at 1.58 hectares. The increase in floor area of 2,953 sq.m. does not exceed 25% of the permitted development floor area of 85,765 sq.m. The number of residential units permitted under the parent permission at 299 was materially below the 500 unit threshold. The increase in the number of units by 27 to 326 does not exceed 25% of that permitted or 50% of the 500 unit threshold.

7.8.4. The need for environmental impact assessment can, therefore, be excluded.

## 7.9. **Appropriate Assessment**

7.9.1. I submit that having regard to the nature and extent of the development which consists of amendments to approved plans on a brownfield, fully serviced city centre site, and to the distance to the nearest European Sites, it is concluded no appropriate assessment issues arise as the proposed development would not be

likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

Having regard to the foregoing and the provisions of the current Dublin City Development Plan, 2022, against which the proposed development is appropriately assessed, I recommend that permission for the above described development be refused for the following reasons.

## 9.0 Reasons and Considerations

1. It is the policy of the planning authority as set out in the current Dublin City Development Plan 2022 to generally preclude large scale residential developments (in excess of 100 units) which comprise of 100% Build to Rent typology and that a minimum of 60% of units within a development are designed as standard apartments in accordance with the requirements set out in the Sustainable Urban Housing: Design Standards for New Apartments, December 2020 so to ensure there are opportunities for a sustainable mix of tenure and long term sustainable communities. Having regard to the extent of the Build to Rent accommodation component within the permitted development under planning register reference 2682/20 (ABP 309217-21) comprising 100% of the 299 no. dwelling units, it is considered that the proposed development seeking a further 27 no. additional Build to Rent units would be contrary to the provisions of policy QHSN 40 of the current Dublin City Development Plan, 2022, and would be contrary to the proper planning and development of the area.
2. The scheme as permitted on the site under planning register reference 2682/20 (ABP 309217-21) provides for a density of 474 dwelling units per hectare. The proposed increase in dwelling units would result in an increase in density to 517 units per hectare. This increase in density is considered to be contrary to the provisions of Appendix 3 the current Dublin City Development Plan, 2022, which states there is a general presumption against schemes with a density of in excess of 300 units per hectare and identifies a



density range of 100 -250 units per hectare for such a city centre site. The proposed would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**January, 2022**