



An
Bord
Pleanála

Inspector's Report ABP-313546-22

Development	Demolition of building and construction of a mixed use development including an indoor market and three residential blocks with 20 apartments and all site development works.
Location	Liberty Market, 71, Meath Street, Dublin 8, D08 A526
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2647/21
Applicant(s)	Michael Fitzgerald
Type of Application	Planning Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party Appeal
Appellant(s)	Dr Peter Mac Mahon
Observer(s)	St Catherine's Street Residents Cllr Máire Devine
Date of Site Inspection	27 th March 2023
Inspector	Susan Clarke

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1.0 Site Location and Description

- 1.1. The site is located at Liberty Market (No. 71) on the eastern side of Meath Street, in The Liberties, Dublin 8. It is bound by Engine Alley to the north, the rear gardens of a terrace of dwellings on Catherine Street, Crosstick Alley to the south, and Meath Street to the west. The Applicant highlights that the market has been in operation since the 1970s. The general area enjoys a mix of uses including commercial, retail and residential development. In addition, there are a mix of architectural designs in the area.
- 1.2. The site measures 0.0911 ha and comprises the Liberty Market, which is a single storey industrial building (2,294 sq m). It is accessed via Meath Street, Engine Alley, and Crosstick Alley. The western section of the building fronting onto Meath Street is bound to the north and south by three storey redbrick buildings. The terrace of dwellings on Catherine Street (Nos. 5-14) are two storey in height with single storey rear extensions (a two storey extension to the rear of No. 5) and on-street car parking to the front.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - Phased demolition of the existing single storey market building;
 - Construction of three residential blocks containing 20 No. apartments (four studios; six 1-bed; nine 2-bed and one 3-bed units) above the market building;
 - Private balconies to serve each apartment;
 - A communal courtyard at first floor level and communal terraces at the fourth floor of Blocks A and C;
 - Bicycle parking spaces (20 No.) to be accessed off Crosstick Alley;
 - Hard and soft landscaping;
 - Bin store; and
 - Associated works.
- 2.1.1. Block A is proposed along Engine Alley and is 5 storey in height with the fourth and fifth storeys setback. Block B fronts onto Meath Street and is 4 storeys in

height with the fourth storey setback. Block C is also 5 storeys in height with the fourth and fifth storeys set back. The first three storeys of the development have a red brick finish, while the setback floors (fourth and fifth floors) have a white brick finish. The entrance to the market from Meath Street will be clad in stone at ground floor level.

2.1.2. It is proposed to attenuate the surface water generated on site using a blue roof. In addition, water butts will be installed. It is proposed to discharge the surface water and foul water to an existing combined sewer on Engine Alley. The proposal will be serviced via a 4inch watermain along Engine Alley.

2.1.3. Following a **request for further information**, a number of amendments were proposed to the scheme including *inter alia*:

- Block A and C were reduced in height by one storey resulting in a total of 18 No. apartments (three studios, eight 1-bed, six 2-bed, and one 3-bed units) above the market building.
- The proposal was reduced to two storey in height along the eastern boundary (bordering the rear gardens of Catherine's Street) and was stepped back by between 2.2m and 3m at second floor level and a further 2.2m at third floor level, forming a stepped design from the east.
- The third floor of Block B fronting onto Meath Street was setback a further 2m from the front elevation.
- The white brick finish originally proposed on the upper levels was replaced with a zinc finish.
- The stairway providing access from Engine Alley to the apartments on the upper levels of the scheme, was relocated in a western direction to form a lobby area with a stairs and a lift located beside one another.
- A number of amendments were made to the elevations including fenestration alterations.
- Replacement of a privacy screen with an opaque acoustic screen and planting to the eastern side of the communal courtyard at first floor level.
- Provision of an additional eight bicycle spaces and a cargo bike.

2.2. Along with the standard drawings and information, the application included the following reports:

- Planning Report, including a Housing Quality Assessment
- Architectural Design Statement and Urban Design Report
- Engineering Services Report
- Daylight and Sunlight Assessments
- Verified Views

As part of the RFI Response, a Revised Daylight and Sunlight Assessments and Verified Views were submitted.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Notification of Decision to Grant Permission on 14th April 2022 subject to 19 No. conditions.

Condition No. 4 states:

The development shall be revised as follows:

- a) **The first floor of Block B comprising a 2 bedroom 3 person apartment unit shall be omitted in entirety and revised drawings** submitted indicating that the upper floors of Block B above the market comprise a **2 bedroom 4 person duplex unit** (located on the first and second floors of the block). There shall be no setback from the front building line on Meath Street.*
- b) **Additional screening measures shall be provided to a height of 1.8 metres shall be placed along the perimeter of the balconies located to the east of the 1.5 metre high screen**, which forms the eastern boundary to the communal courtyard, of Unit No's A02 and C02 and to the east facing balustrade of balcony of Unit No's A01 and A04.*
- c) **Additional screening measures shall be provided to the large window at second floor level, to the living room of Unit No. C05 which is forward***

of the of the opaque privacy screen to the east of the communal courtyard.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: To ensure a satisfactory standard of development and to protect adjoining residential amenity. (Bold: Our emphasis.)

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Reports forms the basis of the Local Authority's decision.

There are two Planning Reports on file dated 17th June 2021 and 14th April 2022, respectively.

In summary, the Planning Officer in the former report stated that the demolition of the existing single storey market building and its replacement with a similarly scaled ground floor market with apartments over was considered a sustainable use of this under-utilised infill site. However, the proposal was considered to be over-bearing, excessive, out of scale and out of character in comparison with the prevailing architectural context and the architectural conservation area.

In the latter report, the Officer noted the following:

- The height of Block B which would appear visually incongruous on the streetscape and therefore should be reduced in height by one floor (i.e. recommends the omission of the first floor of Block B).
- The revised scheme achieves the required setbacks from the rear gardens of the houses on Catherine Street.
- There are some concerns regarding the location of balconies of Unit C02 and A02 which are partially forward of the opaque privacy screen to the east of the communal courtyard and which would cause undue overlooking of third party private open space. There are similar concerns regarding the first floor balcony

to the north east of Unit A01. Recommends that this matter be dealt with by condition.

- Notes that the bicycle store and refuse store is fully enclosed.
- All apartments meet with the recommended ADF and VSC levels. The central communal courtyard does not meet the minimum sunlight requirements, however it is noted that the additional 2 No. roof terraces within the development comply with the standards. On balance, having regard to the site location and constraints and the daylight/sunlight levels achieved in the apartment units, the sunlight levels achieved in the courtyard is acceptable in this instance.
- All apartments meet with the minimum requirement in terms of private open space.
- The proposed building is set back from the kerb to provide a footpath of 1800mm wide on Engine Alley.
- A redesign of cycle parking provision demonstrating adequate operational space and parking provision should be conditioned.

Other Technical Reports

Transportation Section (11th June 2021 and 7th April 2022): No objection, subject to condition.

Drainage Section (20th May 2021 and 8th April 2022): No objection, subject to condition.

City Archaeologist: (2nd June 2021): Recommends conditions to be attached should permission be granted.

Senior Environmental Health Officer: No comments received.

3.3. Prescribed Bodies

Irish Water: No comments received.

Minister for of Arts, Heritage and The Gaeltacht: No comments received.

An Taisce: No comments received.

The Heritage Council: No comments received.

An Chomhairle Ealaíon: No comments received.

Fáilte Ireland: No comments received.

3.4. Third Party Observations

Eight observations from local residents were submitted to the Local Authority opposing the proposed development. The key points raised in the Observations can be summarised as follows:

- Excessive development resulting in overbearing impacts.
- Overlooking and loss of privacy.
- Structural concerns for neighbouring property.
- Security concerns in relation to the rear gardens of the dwellings on Catherine Street.
- Dust, noise, littering and rodents will be an issue during construction phases.
- Traffic congestion during construction and overspill parking will result during the operational phase.
- Loss of daylight and sunlight and overshadowing.
- Noise and disturbance to neighbouring residents.
- No archaeology assessment submitted with the application.
- Lack of public consultation.
- Discrepancies on planning drawings.

4.0 Planning History

No planning applications have been identified relating to the site.

5.0 Policy Context

5.1. National & Regional 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. It contains several policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints
- NPO 4 promotes attractive, well-designed liveable communities
- NPO 6 aims to regenerate cities with increased housing and employment
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking
- NPO 27 promotes the integration of safe and convenient alternatives to the car into the design of communities
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location
- NPO 35 encourages increased residential density through a range of measures, including site-based regeneration and increased height.

The primary statutory objective of the **Regional Spatial and Economic Strategy for the Eastern and Midland Regional Authority 2019-2031** (RSES) is to support the implementation of the NPF. The RSES identifies regional assets, opportunities and pressures and provides policy responses in the form of Regional Policy Objectives.

The spatial strategy and the Dublin Metropolitan Area Strategic Plan support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built-up area of Dublin City.

- 5.1.2. Following the theme of ‘compact urban growth’ and NPO 13 of the NPF, the 2018 **Urban Development and Building Heights, Guidelines for Planning Authorities** (hereafter referred to as the ‘Building Heights Guidelines’) outlines the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF. These Guidelines again highlight the need for a development plan to place more focus in terms of planning policy and implementation on reusing

previously developed brownfield land building up urban infill sites. It notes that increasing building height is a significant component in making the optimum use of the capacity of sites in urban locations where transport employment, services and retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable the proper consideration of development proposals for increased building height linked with the achievement of greater density of development.

5.1.3. **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020 and 2022)**, hereafter referred to as ‘the Apartment Guidelines’, sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking. I note that the updated version of the 2020 Guidelines was published on 22nd December 2022. However, the updated amendments relate to Build-to-Rent schemes and as such, they are not material to the assessment of this case.

5.1.4. **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009)**

These Guidelines promote higher densities in appropriate locations. A number of urban design criteria are set out, for the consideration of planning applications and appeals. Increased densities are to be encouraged particularly on infill, brownfield urban sites in close proximity to public transport corridors. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. With specific reference to sites within 500m walking distance of public transport nodes (e.g. stations, halts, bus stops), the Guidelines recommend that minimum net densities of 50 units per hectare should be applied, subject to appropriate design and amenity standards.

5.1.5. **Architectural Heritage Protection Guidelines for Planning Authorities (2011)**

Criteria for assessing proposals within an ACA are set out in Section 3.10 of the Guidelines. The scale of new structures should be appropriate to the general scale of the area and not its biggest buildings. The palette of materials and typical details for façades and other surfaces should generally reinforce the character of the area. Where demolition is proposed, the onus is on the applicant to make the case for

demolition and the Planning Authority should consider the effect on the ACA and any adjacent Protected Structures.

5.2. Dublin City Development Plan 2022-2028

- 5.2.1. Since the Local Authority issued a Notification of Decision to Grant Permission for the proposed development, a new development plan has been prepared and adopted for the City. The relevant development plan to this assessment is the Dublin City Development Plan 2022-2028, which was adopted on 2nd November 2022 and came into effect on 14th December 2022.
- 5.2.2. The majority of the site is zoned Z4 ‘Key Urban Villages/Urban Villages’ which has the aim *“To provide for and improve mixed-services facilities”*. A small section of the site, in the south east corner, is zoned Z1 *“To protect, provide and improve residential amenities”*. Residential is listed as a ‘permissible use’ under both land use zoning objectives. Shop (district) and shop (local) are also permissible under Z4. Shop (local) is listed as an ‘open for consideration’ use under Z1. Section 14.6 (Transitional Zone Areas) of the Development Plan states: *“While zoning objectives and development management standards indicate the different uses permitted in each zone, it is important to avoid abrupt transitions in scale and land-use between zones. In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals, and to landscaping and screening proposals, in order to protect the amenities of residential properties”*
- 5.2.3. The site is located within the Strategic Development and Regeneration Area 15 – Liberties and Newmarket Square. Section 13.17 of the Development Plan outlines the objectives for the SDRA. One of the “guiding principles” for the SDRA is to support 6-8 storeys as a benchmark height for new developments. However, the SDRA also requires that new buildings respond to the scale and grain of the prevailing character of the particular street. In addition, the SDRA proposes that public realm works are carried out on Meath Street.
- 5.2.4. Objective CUO11 (Markets & Capel Street): *To retain existing and seek the development of new community, arts and entrepreneur led arts and cultural initiatives*

within the Markets Area of the City and to support this area developing an identity as a vibrant cultural hub within the city core.

- 5.2.5. The site is located within the Thomas Street and Environs Architectural Conservation Area Plan and as such the following policies apply:

Policy BHA7:

- a) To protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area, and its setting, wherever possible. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.*
- b) Ensure that all development proposals within an ACA contribute positively to the character and distinctiveness of the area and have full regard to the guidance set out in the Character Appraisals and Framework for each ACA.*
- c) Ensure that any new development or alteration of a building within an ACA, or immediately adjoining an ACA, is complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of scale, height, mass, density, building lines and materials, and that it protects and enhances the ACA. Contemporary design which is in harmony with the area will be encouraged.*
- d) Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.*
- e) Promote sensitive hard and soft landscaping works that contribute to the character and quality of the ACA.*
- f) Promote best conservation practice and encourage the use of appropriately qualified professional advisors, tradesmen and craftsmen, with recognised conservation expertise, for works to buildings of historic significance within ACAs.*

All trees which contribute to the character and appearance of an Architectural Conservation Area, in the public realm, will be safeguarded, except where the tree

is a threat to public safety, prevents universal access, or requires removal to protect other specimens from disease.

Policy BHA8:

There is a presumption against the demolition or substantial loss of a structure that positively contributes to the character of the ACA except in exceptional circumstances where such loss would also contribute to a significant public benefit.

Section 6.2.8 (New Build) of the **Thomas Street and Environs ACA, 2009** states that new developments should have regard to the grain and character of the adjacent buildings, including height, massing, proportions and plot width.

5.2.6. The site is located within the Zone of Archaeological Constraint for the Recorded Monument DU018-020 (Historic City), which is listed on the Record of Monuments and Places (RMP).

5.2.7. Chapter 4 of the Development Plan relates to Shape and Structure of the City

Of note:

- Policy SC10 – Density
- Policy SC11 – Compact Growth
- Policy SC12 – Housing Mix
- Policy SC16 – Building Height Locations

5.2.8. Chapter 5 of the Development Plan relates to Quality Housing and Sustainable Neighbourhoods.

Of note:

- Policy QHSN36 – High Quality Apartment Development
- Policy QHSN38 – Housing and Apartment Mix

5.2.9. Chapter 15 outlines the Plan's development management standards:

- Section 15.5.1 Brownfield, Regeneration Sites and Large-Scale Development
- Section 15.5.2 Infill Development
- Section 15.9 Apartment Standards:

- Unit Mix (15.9.1): The subject site is located within two areas of the city ((i) the Liberties and (ii) the North Inner City) where sub-city level HNDA analysis was completed. The outcome of these two local HNDAs indicates increased demand for two and three person households and declining demand regarding single person households. Having regard to the analysis the Development Plan requires any application for 15+ residential units in these two areas to have the following unit mix:

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

The Development Plan acknowledges the flexibility that SPPR2 of the Apartment Guidelines provides in terms of unit mix and states that each application will be assessed on a case-by-case basis.

- Dual Aspect (15.9.3): Dublin City Council will encourage all developments to meet or exceed 50% dual aspect within the development unless specific site characteristics dictate that a lower percentage may be appropriate. In prime city centre locations, adjoining or adjacent to high quality, high frequency public transport, 33% dual aspect may be accepted in locations where there are specific site constraints such as tight urban infill sites up to 0.25ha or where there is a need to maintain a strong street frontage. North facing units will only be considered where they face an area of high amenity value such as a public park, water body or another significant view of interest.

5.2.10. Appendix 3 (Achieving Sustainable Compact Growth Policy for Density and Building Height in the City) outlines the Development Plan's policy in relation to building height, plot ratio and site coverage.

- **Density:** City Centre and Canal Belt/SDRA - 100-250 net density range (units per ha)
- **Plot Ratio:** Central Area – 2.5-3.0
- **Site Coverage:** Central Area – 60%-90%

Higher plot ratio and site coverage may be permitted in certain circumstances such as:

- Adjoining major public transport corridors, where an appropriate mix of residential and commercial uses is proposed. To facilitate comprehensive re-development in areas in need of urban renewal.
- To maintain existing streetscape

profiles. • Where a site already has the benefit of a higher plot ratio. • To facilitate the strategic role of significant institution/employers such as hospitals.

- **Height:** Table 3: Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale outlines the criteria for assessing proposals in an SDRA, which exceed the guiding principles for that subject SDRA.
- **Bicycle Parking Standards** – Apartment 1 per bedroom (long term) and 1 per two apartments (short stay/visitor), Retail 1 per 5 staff (long term) and 1 per 100 sq.m GFA (short stay/visitor).

5.2.11. Appendix 16 addresses the matter of sunlight and daylight.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within or directly adjacent to any Natura 2000 sites. The South Dublin Bay and River Tolka Estuary SPA (site code 004024) is located c3.8km northeast of the site and South Dublin Bay SAC (site code 00210) is located c4.4km east of the site. The North Dublin Bay SAC (site code 000206) and North Bull Island SPA (site code 004006) are located approximately c6.8km to the north-east of the site.

5.4. EIA Screening

- 5.4.1. On the issue of environmental impact assessment screening I note that the relevant classes for consideration are Class 10(b)(i) “construction of more than 500 dwelling units” and Class 10(b)(iv) “urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere”. Having regard to the modest size of the site at 0.0911ha and the number of units to be provided at 18 No. which is considerably below the 500 dwelling threshold, it is considered that, having regard to the nature and scale of the proposed development, the location of the development on an infill inner city, serviced site, the separation distance from the nearest sensitive location, together with the characteristics and likely duration of potential impacts, that the proposal is not likely to have significant effects on the environment and that the submission of an environmental impact assessment report is not required. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A Third-Party Appeal was submitted to An Bord Pleanála on 10th May 2022 by Dr. Peter Mac Mahon of Meath Street, opposing the Local Authority's decision. The grounds of appeal can be summarised as follows:

- All plans (original drawings and RFI drawings) include the development and use of a portion of the premises to the rear of 72 Meath Street. Despite the Local Authority requesting the Applicant to clarify the site boundary, the rear of No. 72 is included in the application. The impression from the proposed site layout plan is given that space exists between the rear of 72 Meath Street and the proposed four storey development.
- The proposed Ground Floor plan gives the impression that 72 Meath Street is double the size of No. 73/74 Meath Street. This material discrepancy is relevant when assessing both the loss of light and the impact of the proposed development to the rear of 72 Meath Street.
- The applicant has no entitlement to include the rear of No. 72 Meath Street as forming any part of its development and it is misleading to warrant to the planning authorities that external access is available to the west of Block A.
- The proposed development plan at Figure 2 in the revised daylight and sunlight assessments misrepresent the boundaries of the proposed development.
- The revised daylight and sunlight report failed to assess the major adverse impact in terms of the loss of sunlight hours and natural light specific to the upper floor apartments at No. 72 Meath Street. The apartments on the first and second floor will not retain an Average Daylight Factor that falls within minimum recommendations of the BRE Guidelines and will effectively be entombed by the proposed development.
- In relation to the revised Daylight and Sunlight Assessments, all shadow casting diagrams have been switched to give the wrongful impression that the proposed development will improve daylight and sunlight on neighbouring buildings.

6.2. Applicant Response

6.2.1. The Applicant submitted a First-Party Response to the Third-Party Appeal. The key points raised in the Response can be summarised as follows:

- All elements within the red line shown throughout the application drawings, including those submitted with the Further Information response to Dublin City Council are in the ownership and control of the First Party.
- The drawings submitted by the Appellant illustrate different layouts for No. 72 Meath Street, but neither of these exhibits appear to truly represent the footprint of No. 72 as it stands at present.
- Temporary retention permission for a period of 3 years was granted for No. 72 for the use of the ground floor as a veterinary commercial unit in 2012 (Reg. Ref. 2931/12). No later applications were identified relating to the site and as such the use is unauthorised.
- The definition of No. 72 and No. 73/74 Meath Street is not a matter for this appeal.
- The measurements on site and survey of the market building contradict the claim that an area to the rear of the ground floor single storey element is within the Appellant's ownership.
- The proposal will safeguard the residential amenity of adjoining residents including those at No. 72 Meath Street.
- The built form of Block B does not project beyond the rear building line with No. 72 Meath Street. The elevation of the proposed Block A opposite the rear of No. 72 is stepped and significantly setback from the rear elevation. The rear of No. 72 is separated via part of the communal courtyard of the proposal and reflects the same relationship that the proposed development will have with other properties along Meath Street to the west of the application site.
- Where the Planning Authority had issues in terms of residential amenity of No. 72 Meath Street they have taken a measured response and instructed the First Party to further reduce the proposed Block B which is the closest Block to No. 72 Meath Street as well as adjustments made to proposed Block A (relating to

additional screening) and its significant reduction in scale and massing than originally applied for.

- The Appellant has provided no evidence that the north-east facing rear windows of the flats in No. 72 will see a significant reduction in daylight/sunlight beyond that acceptable under the BRE Guidelines.

6.3. Planning Authority Response

- 6.3.1. Dublin City Council has not submitted a response to the Third-Party appeal.

6.4. Observations

- 6.4.1. Two Observations were submitted to the Board opposing the Local Authority's decision. The key points from the Observations are summarised below.

Cllr Máire Devine, Ballyfermot Road, Dublin 10

- The application is fundamentally flawed as it includes a portion of the rear of No. 72 Meath Street.
- The day/sunlight assessment ignores the impact on No. 72. The proposal will leave the upper floors of No. 72 in permeant darkness.
- The private yards and gardens of the homes along St. Catherine Street will be deprived of much day/sunlight and enjoyment of their private space will be detrimentally affected.
- The small and narrow surrounding streets will be adversely affected especially with overspill parking during and post construction phase.
- There needs to be a comprehensive survey prior to any construction to assess their condition and have this available as a comparative tool during the development process.

Residents of Catherine Street

- The proposal will result in a loss of light.
- Homes in the area will be undermined by the proposed development.

- The proposal will contribute to the already ailments the elderly residents in the area suffer such as dust, noise, disturbance, annoyance and parking of trucks and building materials.
- The site traffic will take over the community and may cause injury or worse to residents.
- The Applicant has only had one meeting and phone conversation with the community.
- The proposal will directly overlook rear gardens.
- The rear of No. 12 has a building which adjoins the wall of the proposed development and has major concerns this may damage or weaken the property.

6.5. Further Responses

None.

7.0 Assessment

Having examined the application details and all other documentation on file, including the submissions received in relation to the planning application, the Third-Party Appeal, and Observations, and inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of Development
- Impact on Residential Amenity
- Daylight and Sunlight Impacts
- Standard of Residential Development Proposed – New Issue
- Procedural Matters

Each of these items is addressed in turn below.

7.1. Principle of Development

- 7.1.1. The site has a split zoning, with the majority being zoned Z4 “Key Urban Villages/Urban Villages” which has an aim “*To provide for and improve mixed-services*

facilities", while the area in the south east of the site (i.e. to the rear of Nos. 6 and 7 Catherine Street) being zoned Z1 "Sustainable Residential Neighbourhoods" which has the aim *"To protect, provide and improve residential amenities"*. Residential is listed as a 'permissible use' under both land use zoning objectives. Shop (district) and shop (local) are also permissible under Z4. Shop (local) is listed as an 'open for consideration' use under Z1. The proposal involves the phased demolition and construction of a new market building and 18 No. apartments. The phased construction is required to maintain ongoing operations of the market. As highlighted by the Applicant, Liberty Market has been operating on the site since 1970s. The established use positively contributes to the area's vibrancy and vitality and as such I consider this aspect of the proposal to be acceptable having regard to its status as an underutilised, brownfield, inner city site. Section 14.6 (Transitional Zone Areas) of the Development Plan states: *"it is important to avoid abrupt transitions in scale and land-use between zones. In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones"*. Enclosed bicycle parking and bin storage associated with the market are proposed in the south east corner of the site on the section of the site zoned Z1. It needs to be ascertained whether these elements of the proposal would be detrimental to the amenities of adjoining residential properties or the character of the area. Regard is had to these issues in the Assessment below.

7.2. Impact on Residential Amenity

Scale and Massing

- 7.2.1. The proposed development involves the demolition of the single storey market building and construction of a part 1/2/3/4 storey building. Appendix 3 of the Development Plan states that *"a default position of 6 storeys will be promoted in the city centre and within the canal ring subject to site specific characteristics, heritage/environmental considerations, and social considerations in respect of sustaining existing inner city residential communities. Where a development site abuts a lower density development, appropriate transition of scale and separation distances must be provided in order to protect existing amenities"*.
- 7.2.2. Having regard to the stepped setbacks proposed along the eastern elevation adjoining the rear gardens of the dwellings on Catherine Street, I do not consider that the

proposal will have an overbearing impact on the subject dwellings that would adversely impact their residential amenity. Whilst No. 7 Catherine Street is the closest dwelling located to the site, there will not be significant impact on this property as the proposal is single storey in height at this location (i.e. adjoining the bin and bicycle storage area associated with the market building). At the most eastern section of the two storey element of the proposal, it would be setback c14m from the rear first floor elevation of No. 8 and 9 Catherine Street and c9.5m from the rear ground floor extensions of these properties. The second floor level at its closest point is located c.16m from the first floor rear elevations of the dwellings on Catherine Street, while the third floor level at its closest point is located c.18m from the dwellings.

- 7.2.3. The rear elevation of the two apartments on the first and second floor levels of No. 72 Meath Street will be c. 2m from the landscaping strip on the proposed communal courtyard at first floor level of the proposed development. There will be separation distances of c. 5.2 and 7.5m from the rear elevations of the two apartments, to the nearest section of the western elevation of Block A on the first and second floor levels, respectively.
- 7.2.4. In terms of overbearance, I acknowledge that the proposed development will have a material impact on the adjoining two-storey dwelling on Catherine Street and the two apartments in No. 72, however, in my view the impact would be acceptable having regard to the stepped setback nature of the proposal. In my opinion, it is not a reasonable expectation that there would be no material change in the overall height and scale of any redevelopment of the subject site having regard to national guidelines which promotes compact under development, and the site's city centre location. In summary, in my opinion, the proposal would not unduly impact the residential amenity of the area.

Overlooking and Privacy

The Appellant and Observers have raised concerns in relation to overlooking from the proposed development. In terms of overlooking of the dwellings along Catherine Street, I note that the eastern elevation of the proposed development does not include any windows, with the exception of a window at the third floor level within the circulation core that will be constructed with opaque glazing (see GA09, Rev. U). Condition 4(b) attached to the Local Authority's Notification of Decision to Grant Permission requires further screening to the balconies which have perimeters located

along the eastern elevation. Furthermore, Condition 4(c) requires that additional screening measures shall be provided to the large window at second floor level, to the living room of Unit No. C05 which is forward of the opaque privacy screen to the east of the communal courtyard. Having regard to the foregoing, no direct overlooking of the dwellings on Catherine Street will occur. Similarly, there are no windows proposed directly opposite No. 72 Meath Street and landscaping is proposed along the communal courtyard opposite the neighbouring apartments to prevent overlooking. The east facing windows to the rear of No. 73/74 will face the western elevation of Block A, which has no windows. As such, no overlooking or loss of privacy from the proposed development will result on the neighbouring units.

Visual Impact

- 7.2.5. In terms of the visual impact from the proposed development, as outlined above I am satisfied with its overall scale and massing in the context of the surrounding environment. I note that Condition No. 4 attached to the Notification of Decision to Grant Permission requires:

The first floor of Block B comprising a 2 bedroom 3 person apartment unit shall be omitted in entirety and revised drawings submitted indicating that the upper floors of Block B above the market comprise a 2 bedroom 4 person duplex unit (located on the first and second floors of the block). There shall be no setback from the front building line on Meath Street. (Bold: My emphasis.)

- 7.2.6. This Condition will result in a total of 17 No. apartments. I note that the Applicant has not appeal this Condition. The proposed development will match the height of Nos. 67-70 and No. 73/74, while No. 72 would be marginally lower in height. I am satisfied that the palette of materials, principally being redbrick at the lower levels and zinc on the upper levels, will help integrate the proposal into the urban setting. Furthermore, the stone frontage along Meath Street at ground floor level will help distinguish the market building from the upper floors, while also providing an appropriate façade to the main entrance of the market. I note the Applicant has requested that a condition be attached to the decision, should permission be granted, for the signage details to be agreed with the Local Authority prior to the commencement of the development. I consider this to be acceptable. I have reviewed the photomontages and consider that they provide an accurate representation of the proposed development. They are representative of the main views available towards the site and illustrate the visual

impact that the proposal will have on the area in terms of height, scale, and architectural treatment. As outlined above, the proposed development is located within the Thomas Street and Environs ACA. In my opinion, the redevelopment of the site will positively contribute to the area and will integrate successfully within the wider area.

Noise

- 7.2.7. Concerns were raised in relation to noise impacts from the proposal. Having regard to the size and nature of the proposal and the various design measures proposed, including opaque acoustic screens, I do not consider that it is likely that significant noise levels would occur from the apartment units. I note that no issues have been raised in relation to noise from the existing or proposed market building. It is important to note that the site is located in the city centre and as such background noise levels are notable at present from various activities and modes of transport in the area. The proposal does not include any features that would be of concern regarding security or anti-social behaviour. I note that the Local Authority's Notification of Decision to Grant Permission includes a number of conditions (Nos. 15, 16 and 17) in relation to noise management. I am satisfied that the proposal will not generate noise levels that would adversely impact the residential amenity of the area.

Construction Impacts

- 7.2.8. I consider that any construction disturbance impacts on adjoining properties will be only temporary and are inevitable and unavoidable aspects associated with urban development. I am satisfied that this matter can be satisfactorily agreed by conditions requiring the submission of construction management proposals to address any impacts. Furthermore, subject to the implementation of standard construction techniques which can be agreed with the Local Authority prior to the commencement of the development, I am satisfied that the integrity of the adjoining properties can be protected during the construction period of the proposed development.

Traffic

- 7.2.9. The proposed development does not include for any car parking. There are concerns that the proposal will result in overspill parking in the area. I note that Chapter 4 of the Apartment Guidelines addresses car-parking requirements and states that requirements should be minimised, substantially reduced or wholly eliminated in certain circumstances for higher density apartment developments in 'central and/or

accessible urban locations'. Section 4.20 states that these locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. Section 4.20 states that these locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services. Both the Luas Green and Red lines are within 15 minutes walking distance of the site. In addition, Dublin Bus has numerous routes operating in the vicinity. As such I am satisfied that the site comfortably falls within the 'central and/or accessible urban locations' category.

7.2.10. As illustrated on the Development Plan's Map J, the site is located in Area 1. Table 2 attached to Appendix 5 states that a maximum of 0.5 cars per apartment is permissible in Zone 1. Section 4.0 of Appendix 5 states:

A relaxation of maximum car parking standards will be considered in Zone 1 and Zone 2 for any site located within a highly accessible location. Applicants must set out a clear case satisfactorily demonstrating a reduction of parking need for the development based on the following criteria:

- *Locational suitability and advantages of the site.*
- *Proximity to High Frequency Public Transport services (10 minutes' walk).*
- *Walking and cycling accessibility/permeability and any improvement to same.*
- *The range of services and sources of employment available within walking distance of the development.*
- *Availability of shared mobility.*
- *Impact on the amenities of surrounding properties or areas including overspill parking.*
- *Impact on traffic safety including obstruction of other road users.*
- *Robustness of Mobility Management Plan to support the development.*

7.2.11. As stated above, both Luas lines are within walking distance of the site and there are a number of Dublin Bus routes operating in the area. Furthermore, I note that there

are a number of car rental companies operating in the area. There is a good footpath network in the area. Having regard to the foregoing, I have no objection to the absence of car-parking within the proposed development. I consider that the proposal will encourage more sustainable modes of transport and will not result in additional traffic or parking congestion at this location.

- 7.2.12. The Applicant has provided 29 bicycle parking spaces and one cargo bicycle space in lieu of car-parking for the apartments and an additional eight spaces for the market. This exceeds the minimum Development Plan requirement of 1 space per bedroom and one per two apartments. Accordingly, I consider that the quantum of cycle parking to be acceptable.

Conclusion

- 7.2.13. Having regard to the above, I am satisfied that, subject to conditions, the proposed development can be satisfactorily accommodated at this location and that the proposed architectural design would not negatively impact the area's architectural character or amenities. I am satisfied that the proposed development's height, bulk, scale and massing are appropriate for this location having regard to the site's position in the city centre and that the proposed development would not result in undue overbearing impacts. The proposed materials will help visually integrate the proposal into the streetscape. In my view, it will not adversely impact the visual amenity or character of the Thomas Street and Environs ACA. While the proposed development would involve an intensification of activity and development at both construction and operational stages, I consider that the impacts would be acceptable having regard to the site's zoning objectives, location within city centre, its proximity to public transport and the need to facilitate the compact urban development in accordance with local and national planning policies.

7.3. Daylight and/Sunlight

- 7.3.1. One of the primary issues raised by the Third-Party Appellant relates to the potential daylight and sunlight impacts on two apartments on the upper floors of No. 72 Meath Street.

Policy Context

- 7.3.2. Although the proposal does not rely on SPPR 3 of the Urban Development and Building Height Guidelines (2018), I note that Section 3.2 of the Guidelines states that

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

7.3.3. The Apartments Guidelines also 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 these BRE or BS standards when quantitative performance approaches are undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision. Again, 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.

7.3.4. Appendix 16 (Sunlight and Daylight) of the Development Plan highlights that neither the Building Height Guidelines 2018 or the Apartment Guidelines 2020 refers to BS EN 17037 or IS EN 17037, which relates to the British and Irish adaption, respectively, of the European wide standard for daylight (EN 17037). Section 3.6 of Appendix 16 states that *The planning authority understand that, at present, there is some ambiguity in what may be considered the appropriate standard to apply for daylight and sunlight assessments. There is a period of transition at present, during which BS 8206-2 has been superseded, but the relevant guidance within BR 209 has not yet been updated. Thus, both BS 8206-2 and BS EN 17037 have relevance. As such, both for clarity and as an interim measure during this transition period, the planning authority will look to*

receive relevant metrics from BR 209, BS 8206-2 and BS EN 17037. The guide does not outline exact, city wide, expected/accepted results and states that proposals will continue to be assessed on a case-by-case basis depending on site specific circumstances and location. Following the publication of the Draft Development Plan, I note the publication of a new (3rd) edition of the BRE Guide in June 2022. The adopted Development Plan has not been amended to reflect this. I also note the updated British Standard (BS EN 17037:2018 'Daylight in Buildings'), which replaced the 2008 BS in May 2019 (in the UK). However, I am satisfied that BR 209 and BS 8206-2 remain relevant as they are the standards and guidance referred to in the relevant national guidance documents such as the Building Heights Guidelines and the Apartments Guidelines. Therefore, I consider it appropriate to apply these standards in my assessment.

- 7.3.5. 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

- 7.3.6. The application included a Daylight and Sunlight Assessment (April 2021) which was prepared in accordance with Site Layout Planning for Daylight and Sunlight' (2nd edition) and BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. A revised assessment (March 2022) was submitted at RFI stage following the redesign of the proposal.

Impacts on Neighbouring Properties

Daylight

- 7.3.7. The BRE guide acknowledges that, in designing new development, it is important to safeguard the daylight to nearby buildings and I note that the Development Plan also outlines the need to avoid excessive impacts on existing properties. The Applicant's assessment of the proposal contains a 'light from the sky' (VSC) for the windows on

the rear elevations of Nos. 5-14 Catherine Street. In general, Vertical Sky Component (VSC) is a measure of the amount of sky visible from a given point (usually the centre of a window) within a structure. The BRE guidelines state that a VSC greater than 27% should provide enough skylight and that any reduction below this level should be kept to a minimum. If the VSC, with the new development in place, is both less than 27% and less than 0.8 times its former value, occupants of the existing building would notice the reduction in the amount of skylight. The Applicant states *“Most ground floor rooms on Catherine Street do not meet the recommended value of 27% VSC as the currently exist, where amenity areas are small and there is a variety of extensions along the boundaries. A minor adverse impact was noted to the windows in the ground floor living spaces of five of the houses on Catherine Street and a moderate impact in No.8. The living spaces of Nos. 8, 9 & 11 have roof-lights, which would contribute much of the daylight in these rooms beyond the light afforded from these windows.”* The rear windows of Nos. 9, 10, 11, and 13 do not exceed the 0.8 ratio having results ranging from 0.73 and 0.75. I concur with the Applicant that the reductions are relatively minor, and I consider them acceptable having regard to the site's city centre location. The kitchen/living area (two windows in one room) of No. 8 will experience a 0.56 reduction in daylight. I note that the rear bedroom window of this property will experience a reduction of 0.85. Due to the position of the tested windows and the separation distance between them and the subject site, any significant redevelopment of the site in accordance with national policy for compact infill brownfield development, is likely to negatively impact these units in terms of daylight. As outlined above, the development was setback at RFI stage to increase the separation distance of the upper floors of the proposal and neighbouring properties. I note from review of the daylight analysis of the original proposal, that these compensatory design measures significantly improve the daylight results in relation to the Catherine Street properties. In my view, there are limited additional compensatory measures that could be considered in this instance that would notably improve the results, with the exception of introducing significant setbacks. However, such a suggestion would not accord with national policy for high density compact urban development in accessible locations.

- 7.3.8. The Applicant outlines that an assessment of the Average Daylight Factor (ADF) can be used where the room layout of a property is known. The analysis states that there is residential accommodation on the ground, first and second floors of No. 1 Crosstick Alley and there is residential accommodation on the first, second and third floors in

No. 75 Engine Alley. BS8206 – Part 2, sets out minimum values for ADF that designers/developers should strive to achieve, which are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Average Daylight Factor (ADF) is the ratio of total daylight flux incident on the working plane to the area of the working, expressed as a percentage of the outdoor illuminance on a horizontal plane due to an unobstructed CIE standard overcast sky. The BRE guide does not give any advice on the targets to be achieved within a combined living/dining/kitchen 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 combining a living room and kitchen, the minimum ADF should be 2%. Noting the foregoing, the Applicant's analysis demonstrates that all the rooms assessed on the lowest residential floors of Crosstick Alley and Engine Alley would retain an ADF in excess of the minimum recommendation of the BRE guidelines. As such, it is reasonable to conclude that the rooms on the upper floors would also comply with the BRE guidelines.

- 7.3.9. The Appellant highlights that the Applicant has not completed a daylight assessment for the two apartments on the upper levels of No. 72 Meath Street. As part of the First-Party Response, the Applicant states that there is no evidence that the north-east facing rear windows of the flats in No. 72 will see a significant reduction in daylight/sunlight beyond that acceptable under the BRE Guidelines. However, as highlighted by the Appellant, the Applicant has not provided any statistical analysis to support this statement. Furthermore, I highlight that the Applicant has not submitted analysis in respect of No. 73/74 Meath Street, which appears to have apartments on the upper levels that overlook the site. Due to the proximity of these apartments on the neighbouring site to the proposed development and having regard to the level of light that these apartments experience due to the single storey building currently on site, it is likely that they would experience a reduction in daylight from any significant redevelopment of the site in line with national policy for high density development in city centres. From my site visit, I note that these apartments appear to be dual aspect/triple aspect with windows facing onto Meath Street and/or Engine Alley. As highlighted by the Applicant, the reduction of Block B by one storey as per Condition No. 4a attached to the Local Authority's Notification of Decision to Grant Permission would help mitigate the loss of light. On balance, I consider that whilst a reduction of

light would be experience, this is acceptable having regard to the quantum of apartments in the city centre.

- 7.3.10. In summary, as required by the Building Height Guidelines, regard must be had to the provisions of national and local policies and objectives with respect to urban development including increased densities and regeneration within urban areas. Having regard to the foregoing and acknowledging the site's existing low density nature and constraints including the separation distances to the residential units on Catherine Street and No. 72 Meath Street and to the provision of new apartments, I consider that the loss of daylight to the neighbouring residential units to be justified in this instance. As such, in my view a refusal of permission is not warranted with regard to loss of daylight.

Sunlight

- 7.3.11. The Applicant has also carried out a sunlight assessment for the gardens of surrounding properties. The BRE guide recommends that for it to appear adequately sunlit throughout the year, at least half of the space should receive at least 2 hours of sunshine on 21st March. If, as a result of new development, this cannot be met, and the area which can comply is less than 0.8 times its former value, then loss of sunlight is likely to be noticeable. The Applicant's analysis demonstrates that none of the amenity spaces to the rear of Nos. 5-14 Catherine Street would meet the BRE criteria to be 'adequately sunlit'. The Applicant states that *"The spaces are small and there are a variety of extensions along the boundaries. Four of the houses have practically no area of the ground receiving 2 hours of sunlight on the 21st March as they exist and this would be unchanged should the proposed development proceed. An impact is noted in four of the amenity areas. The existing market building is a single storey structure, it is likely that any development of a modest scale would have a similar impact."* I concur with the Applicant that the reduction in sunlight is relatively marginal for the units along Catherine Street, acknowledging the levels of sunlight that these units currently experience. Having regard to the site's constraints and the provision of new units on a serviced, brownfield city centre site, I consider the reduction in sunlight to be acceptable. The two upper level apartments in No. 72 or Nos. 73/74 Meath Street do not appear to have any balconies or terraces facing the subject site. As such, there is no sunlight assessment required in respect of these units.

Overshadowing

7.3.12. In terms of overshadowing of neighbouring properties, Appendix A attached to the Applicant's Report provides analysis for the March equinox and the summer and winter solstice. In summary, the analysis demonstrates that the proposal will have a significant impact on the rear of the properties along Catherine Street at 4pm and on the rear of No. 72 at 13pm during the March equinox in comparison to the existing level of overshadowing from the single storey building on the site. However, at all other times, whilst there will be an increase in overshadowing on the rear of the properties along Catherine Street and No. 72 Meath Street, I do not consider that it would significantly impact the residential amenities of these properties. I concur with the Applicant that any redevelopment of the site in line with national policy for high density development at serviced, city centre locations next to public transport, is likely to impact neighbouring properties due to the city's tight urban grain. In summary, I consider that the level of overshadowing on neighbouring properties is acceptable having regard to the site's location in the inner city, and would not unduly impact the residential amenity of the area.

Proposed Development

Daylight

7.3.13. In terms of the proposed units, the Applicant's analysis demonstrates that all rooms would comply with the BRE Guidelines relevant ADF values.

Sunlight/Overshadowing

7.3.14. In terms of the proposed communal courtyard, the Applicant's analysis demonstrates that only 15.3% of the area would receive at least 2 hours of sunshine on 21st March. The Applicant highlights that there are a number of amenity spaces in the area including at St. Patrick's Park and Weaver Square. The Applicant's original analysis (April 2021) indicates that the amenity space on the roofs of Block A and Block C will experience 45% and 95%, respectively. Whilst analysis of these roof spaces was not provided in the revised daylight and sunlight report submitted at RFI stage, having regard to the nature and scale of the amendments made to the scheme at that time, I do not consider that they would fundamentally alter the original results for these spaces. I note that the Applicant has not included any analysis with regards to the amount of sunlight that the proposed balconies would receive. Due to the site's orientation on a north-south axis, a number of the north facing balconies (five) will likely experience limited sunlight in comparison to the southern and eastern facing

balconies. Having regard to the site's constraints in terms of its, size, orientation and proximity to neighbouring developments, I consider the level of sunlight to be acceptable in this instance.

Conclusion

7.3.15. I reiterate that the mandatory application of the BRE standards is not required in this case by the Development Plan or by Section 28 Ministerial guidelines. Consistent with that approach, the BRE guide itself highlights further the need for flexible interpretation in the context of many other design factors. I am satisfied that the Applicant's assessment of the proposal has been competently prepared in accordance with the BRE / BS guidance and methodology. The assessment demonstrates that the impacts would be acceptable in accordance with recommended flexible interpretation of BRE guidance. I highlight that the Appellant has not submitted technical evidence contravening the Applicant's assessment. The site is located in a well-connected urban area and as previously outlined, increased height and density should be encouraged at such locations in order to achieve wider NPF planning objectives relating to compact development and brownfield redevelopment. Accordingly, I am satisfied that the proposed development is acceptable at this location and that it will not excessively detract from the amenities of surrounding properties by reason of daylight/sunlight/overshadowing impacts.

7.4. Standard of Accommodation – New Issue

7.4.1. The Planning Authority states that "*Having regard to SPPR 1 of Sustainable Urban Housing: Revised Design Standards for New Apartments – Guidelines for Planning Authorities, DoHLGH, December 2020 it is considered that in terms of mix and floor the proposal accord with the Guidelines.*" Furthermore, I highlight that neither the Appellant nor Observers raised concerns in relation to the standard of accommodation proposed.

Mix of Units

7.4.2. The Planning Authority have raised no significant concerns in relation to the proposed apartment standards. The proposal is located in a 'Central and/or Accessible Urban Location' as described in Section 2.4 of the Apartment Guidelines.

- 7.4.3. The development includes 18 No. residential apartments comprising three studios, eight 1-beds, four 2-beds (3 persons), two 2-beds (4 persons), and one 3-bed. As such the scheme, comprising 61% one beds and studios, exceeds the requirements of SPPR 1 which requires that housing developments may include up to 50% one-bedroom or studio type units.
- 7.4.4. SPPR 2 states that for all building refurbishment schemes on sites of any size, or urban infill schemes on sites of up to 0.25ha, where between 10 to 49 residential units are proposed, the flexible dwelling mix provision for the first 9 units may be carried forward and the parameters set out in SPPR 1, shall apply from the 10th residential unit to the 49th. As such, the scheme is compliant with SPPR 2.
- 7.4.5. The Apartment Guidelines states that statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan. As outlined above, Section 15.9.1 (Unit Mix) of the Development Plan requires that any application for 15+ residential units in The Liberties to have the following unit mix:
- A minimum of 15% three or more bedroom units.
 - A maximum of 25%-30% one bedroom / studio units

As outlined above, only one of the units is a 3 bed and 61% of the total number of units comprise 1-bed/studios. The Development Plan acknowledges the flexibility that SPPR2 of the Apartment Guidelines provides in terms of unit mix and states that each application will be assessed on a case-by-case basis. Ultimately, the appropriate mix of units in this case requires a resolution between national guidance, which is recognised in the Apartment Guidelines as a broad and consistent but flexible safeguard, and more specific local development plan policy, particularly in relation to the high proportion of smaller studio / 1-bed units but also in relation to a shortfall in larger 3-bed+ units.

- 7.4.6. The Local Authority's decision to grant permission demonstrates flexibility in exceeding the 50% threshold for studio/1-bed units as per SPPR 1. That decision was made under the previous Development Plan 2016-2022, section 16.10.1 of which also required a mix in all apartment developments of a maximum of 25-30% 1-bed units

and a minimum of 15% 3+ bedroom units. Therefore, considerable flexibility was also exercised by the planning authority in relation to this requirement.

- 7.4.7. The new Development Plan 2022-2028 is now in operation. It effectively replicates the housing mix requirements as per section 16.10.1 of the previous Development Plan, but importantly applies them to Liberties Sub-City and the North Inner City areas only. Therefore, in my opinion, the main policy difference between the previous and current Development Plans is that the current plan is informed by an evidence based, targeted HNDA. This is important as SPPR 1 allows for the application of a specific mix of units following an evidenced-based HNDA, as opposed to the previous development plan which applied a 'blanket' mix for all apartment developments throughout the city. The HNDA highlights increased demand for two and three person households and declining demand regarding single person households. Taking into account the modelled declining demand for one bed units and the current pattern of applications with high proportions of studio / 1-bed units and no 3-bed units, the HNDA recommends a policy response requiring a mix of units in the Liberties as adopted in section 15.9.1 of the Development Plan. However, both the HNDA and the Development Plan recognise the potential to exercise discretion / flexibility on a case-by-case basis as per SPPR 2 of the Apartments Guidelines.
- 7.4.8. In my view, this is a material deviation from the standards required by the Development Plan and as such the proposal would not be consistent with Policy QHSN38 (Housing and Apartment Mix): *To encourage and foster the creation of attractive, mixed use, sustainable residential communities which contain a wide variety of housing and apartment types, sizes and tenures, in accordance with the Housing Strategy and HNDA, with supporting community facilities and residential amenities. Further detail in regard to unit mix is set out in Chapter 15: Development Standards. Unit mix requirements for the Liberties and the North Inner City are set out in Section 15.9.1 and Table 37 of the Housing Strategy in Appendix 1.* The housing mix specified in the Plan is not a new requirement. It already existed by virtue of section 16.10.1 of the previous Development Plan. However, in my opinion, the provisions have now been strengthened through the completion of an evidence based HNDA which specifically addresses the Liberties at a sub-city level, as is provided for under SPPR1 of the Apartment Guidelines. And while I acknowledge that SPPR2 still provides an opportunity to exercise discretion, I would feel that there is no evidence to justify such

a significant departure from Development Plan policy (i.e. permitting >61% studio/1-bed units where policy recommends a maximum of 30%).

7.4.9. As outlined above, neither the Local Authority or Appellant raised any concern in relation to this matter and as such the Board may wish to seek the views of the relevant parties prior to determining the case. However, given the degree of non-compliance, the proposed scheme would require comprehensive revision. I highlight that the Development Plan, which has only recently been adopted by the City Council, was reviewed by the OPR.

7.4.10. In conclusion, I consider that the proposed mix of units would fall considerably short of meeting the identified housing needs of the area. As such, I recommend that permission is refused on this basis.

Floor Areas and Dimensions

7.4.11. I have reviewed the gross floor areas for each unit, and I am satisfied that they meet the minimum areas as per the Apartment Guidelines. Section 3.8 of the Guidelines sets out that the majority of apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1-, 2- or 3-bedroom unit types, by a minimum of 10%. I am satisfied that the scheme is compliant in this regard. I have also examined the internal room areas and widths and consider that they comply with the minimum requirements for living/kitchen/dining spaces, storage, and bedrooms, as set out in Appendix 1 of the Guidelines.

Aspect

The Apartment Guidelines (SPPR 4) require that a minimum of 33% dual aspect units be provided in central and accessible urban locations on building refurbishment/urban infill sites up to 0.25ha. Only four (A01, B01, B02, and A04) of the 18 No. units proposed are dual aspect and as such the proposal is not compliant with SPPR 4 (nor Section 15.9.3 of the Development Plan).

Amenity Space

7.4.12. All of the units have private open space that is compliant in quantitative terms with the Apartment Guidelines requirements. Furthermore, a total of 268 sqm of communal open space is provided for, and as such is compliant with the Apartment Guidelines' requirements.

7.4.13. The Development Plan (s. 15.8.6) requires a provision of 10% of the site area as public open space, or otherwise a financial contribution in lieu of such provision (as per s. 15.8.7 of the Plan). Acknowledging the site's size and proximity to neighbouring developments, in my opinion, the provision of public open space is not viable on this site, and I have no objection in this regard.

Communal Facilities

7.4.14. A bin storage area is proposed at ground floor level facing onto Crosstick Alley.

7.4.15. The Apartment Guidelines state that cycle storage facilities shall be provided in a dedicated facility of permanent construction, preferably within the building footprint or, where not feasible, within an adjacent or adjoining purpose-built structure of permanent construction. The scheme includes for 29 No. bicycle spaces and a cargo bike space within an enclosed area fronting onto Crosstick Alley.

7.4.16. The communal access and stair cores are also acceptable in terms of convenience and security in accordance with the provisions of the Apartments Guidelines. Given the limited scale of the development I am satisfied that no other communal facilities are required.

Conclusion on Residential Standards

7.4.17. Having regard to the foregoing, I am satisfied that, other than the significant shortfall in terms of the mix of units included, the proposed apartment units would be sized, orientated, and designed in accordance with the requirements of the Apartment Guidelines.

7.5. Procedural and Other Matters

7.5.1. The Third-Party argues that the application includes a section of the rear of No. 72 Meath Street and that no consent has been given to include this section. I highlight that the Local Authority requested that the Applicant clarify the red line site boundary at RFI stage. The Applicant amended the red line boundary originally shown on Dwg No. GA01, Rev. M to exclude a small portion of the rear of No. 72 Meath on Dwg No. GA01, Rev. U. As part of the First-Party Response to the Appeal, the Applicant states that no portion of No. 72 has been included in the application. I note that the Appellant includes two ground floor plans for No. 72 however, as highlighted by the Applicant, the plans differ with respect to the rear extent of the subject unit. In addition, the Applicant in Appendix A of the First-Party Response includes photographs of the

subject site and neighbouring premises. However, the boundary between the properties, illustrated with a red line, does not appear to be the same in the first photograph as that shown in the three other photographs.

- 7.5.2. The Development Management Guidelines for Planning Authorities (2007) state “*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts*”. These Guidelines advise that where a third party raises doubts as to the sufficiency of an applicant’s legal interest in a site, further information may have to be sought under Article 33 of the Planning and Development Regulations, 2001 (as amended). If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. The Guidelines further advise that, only where it is clear from the response that the applicant does not have sufficient legal interest, should planning permission be refused.
- 7.5.3. Acknowledging the case put forward by the Applicant that they have sufficient legal interest to make the planning application and the counter arguments presented by the Appellant, in my view, there is a lack of clarity regarding the boundary between the two sites.
- 7.5.4. Having regard to the foregoing and acknowledging the Development Management Guidelines for Planning Authorities (2007) and the lack of clarity on this issue, I do not recommend that permission is refused on this basis. As highlighted by the Guidelines and the Local Authority, Section 34(13) of the *Planning and Development Act 2000 (as amended)* states: “*A person shall not be entitled solely by reason of a permission under this section to carry out any development.*” As such, should the Board be minded to grant permission for the development, it is the Applicant’s responsibility to ensure sufficient legal interest exists to implement the permission. Under such a scenario, I recommend that the Board’s Direction makes reference to this Section of the Act and suggest that a copy of the Direction issues with the Order.
- 7.5.5. The Applicant highlights that temporary retention permission for No. 72 was received under Reg. Ref. 2931/12 for use of the ground floor as a veterinary clinic for a three year period. The Applicant states that this use is now unauthorised. In my opinion, the Board should limit its assessment to the proposed development on the subject site as described in the Statutory Notices and illustrated on the planning drawings. Any

potential unauthorised development on neighbouring sites are matters for the Local Authority to consider.

- 7.5.6. In relation to the comments made by the Appellant with respect to the plans shown for No. 73/74 in comparison to those shown for No. 72 on the planning drawings, I note that there are inconsistencies on the drawings with respect to the floor plan for No. 73/74. Notwithstanding this, I have assessed the potential impacts in terms of daylight on No. 73/74 in Section 7.3.9 above.
- 7.5.7. The Appellant highlights that there was limited consultation with the public prior to the lodgement of the planning application. Public consultation prior to the lodgement of an application is not mandatory for a project of this size and nature. Furthermore, I note that observations were made to the Local Authority in respect to the proposed development during the relevant statutory consultation periods following the lodgement of the original planning application documentation and the RFI Response.

8.0 Appropriate Assessment

- 8.1.1. Having regard to the nature and scale of the proposed development in an established urban area on serviced land, and the separation distance to the European sites to the subject site, I do not consider that the proposal would be likely to significantly impact the qualifying interests of the European Sites during either the construction or operational phases of development. As such, I consider that no Appropriate Assessment issues arise. In conclusion, I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1.1. I recommend that planning permission be refused for the proposed development based on the reasons and considerations set out below.

10.0 Reasons and Considerations

The Dublin City Development Plan 2022-2028 (Policy QHSN38) seeks to create sustainable residential communities which contain a wide variety of housing and apartment types, sizes and tenures, in accordance with the Housing Strategy and

Housing Need and Demand Assessment (HNDA). Based on a sub-city level HNDA for the Liberties, Section 15.9.1 of the Development Plan requires that developments of the nature proposed contain a minimum of 15% three or more-bedroom units and a maximum of 25%-30% one-bedroom / studio units. These provisions are considered reasonable in accordance with Specific Planning Policy Requirement 1 of 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' issued by the Department of Housing, Local Government and Heritage (December 2020, updated December 2022). The proposed mix of apartments includes an excessive proportion of studio and one-bedroom units (at least 61%) and a deficit of three or more-bedroom units, which would contravene Development Plan policy and would, therefore, fail to adequately address the evidence-based housing needs of the local area. Furthermore, the proposal is not consistent Section 15.9.3 (Dual Aspect) of the Development Plan, which requires for a minimum of 33% units to be dual aspect in more central and accessible urban locations. This requirement aligns with Specific Planning Policy Requirement 4 of the Apartment Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Susan Clarke
Senior Planning Inspector

27th March 2023