



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313655-22

#### Development

The demolition of the part-one, part-two storey detached former licenced public house (950 sq m); the construction of a four storey building with roof access (total gross floor area of 2,421 sq m); (comprising a licensed supermarket of 535 sq m at ground floor; with 24 apartments above.

#### Location

62-66 Faussagh Avenue, Dublin 7,  
DO7 KH60

#### Planning Authority

Dublin City Council North

#### Planning Authority Reg. Ref.

3455/22

#### Applicant(s)

Amberground Limited.

#### Type of Application

Permission.

#### Planning Authority Decision

Refuse Permission.

#### Type of Appeal

First Party.

#### Appellant(s)

Amberground Limited.

#### Observer(s)

Sean Kenna.

Francesco Puzzuoli

**Date of Site Inspection**

16 March 2023.

**Inspector**

Stephen Rhys Thomas.

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## 1.0 Site Location and Description

- 1.1. The site comprises the central plot in a line of two storey commercial premises at 62 to 66 Faussagh Avenue in Cabra, the former Cabra House public bar. The site has pedestrian frontage to Faussagh Avenue to the south and vehicular access by way of a private gated laneway, which provides access to the rear of the commercial strip for servicing purposes. The part two storey and single storey public house premises is detached from the flanking commercial properties to the east and west. The site is broadly level, but rises slightly upwards from Faussagh Avenue to the rear boundaries of houses at Liscannor Road to the north.
- 1.2. The subject neighbourhood centre comprises a planned retail/commercial area, which was developed at the time of construction of this area of housing. To the south is Faussagh Avenue, which is a busy road through the area. There is car parking which serves the neighbourhood centre. To the north, south, east and west of the neighbourhood centre is two-storey residential development. The uses in the immediate vicinity of the subject site include a constituency office, fast-food outlet and a variety of retail units including a Spar and Centra. Upper floors at this neighbourhood centre appear to be in a combination of residential and commercial uses.

## 2.0 Proposed Development

- 2.1. Permission is sought for redevelopment of the site that comprises the following:

The demolition of the part-one, part-two storey detached former public house (950 sq m);

24 apartments accommodated in a four storey building with roof access (total gross floor area of 2,421 sq m), 12 one units and 12 two bed units, a central lift/stair core structure provides access to a roof top open space. A first floor courtyard is located at the centre of U-shaped block, open to the east.

The provision of a licensed supermarket of 535 sq m at ground floor.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse permission for two reasons as follows:

1. Having regard to the close proximity of the rear/northern block of the proposed development to the existing rear party boundaries of dwellings on Liscannor Road, in combination with the proposed height and the number of windows, balconies and living areas, it is considered that the proposed development would be seriously injurious, have an overbearing impact and result in undue overlooking and excessive noise and disturbance on those closest residential properties. The proposed development would therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.
2. The proposed development would not provide a satisfactory standard of residential amenity for future occupiers having regard to the quantity and quality of private amenity space together with the poor outlook for the proposed north facing units to the rear. Furthermore, the applicant has failed to demonstrate to the satisfaction of the Planning Authority that the proposed apartment units and communal open space will receive adequate levels of daylight and sunlight to ensure a high level of residential amenity for future occupants. The proposed development would therefore, be contrary to the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2020, Section 16.10.1 of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The basis of the planning authority decision includes:

- Site description, planning history, land use zoning and relevant Development Plan policies and objectives. Residential and retail uses are permitted on lands zoned Z3.
- Five objections are summarised and issues include: unacceptable design and scale, car parking and traffic concerns, access via laneway and antisocial behaviour, proximity of balconies to roof top plant.
- In terms of design, the ground floor retail elevation lacks active frontage due to substation, pedestrian and cyclist access points. Apartment units are arranged in two blocks around a central courtyard area, the use of which is questioned due to the height of the overall building. There are limited separation distances between units and this is of concern.
- Neighbouring development, at two storeys in height will be adversely impacted by reason of overbearing appearance despite the long back gardens of property along Liscannor Road.
- A sunlight/daylight analysis has not been prepared and it is therefore difficult to determine with certainty, acceptable levels of light for neighbouring properties and future residents.
- The four storey height presents issues of visual amenity and the building will be visible from various viewpoints and may not be absorbed into the existing low rise environment.
- Site coverage for these lands is 60%, the proposed development accounts for 84%. The site is close to Luas and bus services but the rationale for higher site coverage has not been adequately demonstrated.
- Residential accommodations are met in most circumstances, but concerns are raised in relation to dual aspect quality, private amenity spaces have shortfalls, levels of daylight/sunlight not known, public open space not provided and some of the communal open space could suffer overshadowing.
- The access laneway presents issues of safety and surveillance to avoid antisocial behaviour from occurring, a controlled access gate should be retained by agreement.

- Site serviceability is acceptable however, Environmental Health have concerns about the proximity of proposed open balconies and existing air extraction units, residential amenity would be adversely affected.

For the reasons outline above the application was refused permission in accordance with the recommendation of the Planner.

### 3.2.2. Other Technical Reports

Drainage – no objections.

Transportation Planning Division – further information required.

Environmental Health Officer- refusal recommended.

### 3.3. Prescribed Bodies

Transport Infrastructure Ireland (TII) - the site is within the area covered by the levy scheme for light rail. A condition should be attached.

### 3.4. Third Party Observations

Five objections were received, and issues include: unacceptable design and scale, car parking and traffic concerns, access via laneway and antisocial behaviour, proximity of balconies to roof top plant.

## 4.0 Planning History

Site:

PA ref 2683/01 Permission for conversion of first floor to two apartment units.

Nearby Sites:

PA ref 3943/19 and ABP-306026-19 – refusal of permission for 2 apartments at 56 Faussagh Avenue, Cabra, Dublin 7.

## 5.0 Policy Context

### 5.1. Development Plan

The Dublin City Development Plan 2022-2028 is the operative statutory plan for the area.

The site is located on lands subject to Zoning Objective Z3 – Neighbourhood Centres, To provide for and improve neighbourhood facilities. Residential and retail uses are acceptable in principle.

Adjacent properties are subject to zoning objective Z1 - To protect, provide and improve residential amenities.

Relevant policies contained within the Development Plan include:

#### Section 14.6 Transitional Zone Areas

The land-use zoning objectives and control standards show the boundaries between zones. 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 (see also Appendix 3: Achieving Sustainable Compact Growth Policy for Density and Building Height in the City, Chapter 4: Shape and Structure of the City, and Chapter 15: Development Standards for guiding principles regarding criteria such as height, density, urban design).

Relevant Sections of the Development Plan include:

#### Chapter 15 Development Standards

##### Section 15.5.4 Height

Appendix 3 identifies the height strategy for the city and the criteria in which all higher buildings should be assessed.

Appendix 3: Achieving Sustainable Compact Growth Policy for Density and Building Height in the City

Table 3: Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale

The following sections are relevant:

15.5.5 Density

15.5.6 Plot Ratio and Site Coverage

15.5.7 Materials and Finishes

15.6.2 Surface Water Management and SuDs

15.6.8 Landscape Plans and Design Reports

15.6.12 Public Open Space and Recreation

15.7.3 Climate Action and Energy Statement

15.8 Residential Development

15.8.6 Public Open Space

15.8.7 Financial Contributions in Lieu of Open Space

15.8.8 Play Infrastructure

15.9 Apartment Standards

15.9.16 Microclimate – Daylight and Sunlight, Wind and Noise

## **5.2. National and Regional Policy**

### **5.2.1. National Planning Framework 2018-2040**

National Strategic Outcome 1, Compact Growth, recognises the need to deliver a greater proportion of residential development within existing built-up areas.

Activating these strategic areas and achieving effective density and consolidation, rather than urban sprawl is a top priority. A preferred approach would be compact development focused on reusing previously developed, 'brownfield' land.

Objective 2a targets half of future population growth in the existing five Cities and their suburbs.

Objective 3a seeks to deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements, while Objective 3b further seeks to deliver at least half (50%) of all new homes targeted in the five Cities and suburbs, within their existing built-up footprints.

Objective 13 is that planning and related standards including building height and car parking in urban areas, will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth.

Objective 35 seeks to increase residential density in settlements, through measures including infill development schemes, area or site-based regeneration and increased building height.

#### 5.2.2. **Housing for All - a New Housing Plan for Ireland** (September 2021)

A multi-annual, multi-billion euro plan which will improve Ireland's housing system and deliver more homes of all types for people with different housing needs.

The overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life

#### 5.2.3. **Rebuilding Ireland: Action Plan for Housing and Homelessness**

The plan identifies five pillars for action. Pillar 3: Build More Homes, seeks to increase the output of private housing to meet demand at affordable prices.

The key action is to double housing output over the Plan period aided by measures including infrastructural funding through the Local Infrastructure Housing Activation Fund (LIHAF).

#### 5.2.4. **Regional Spatial and Economic Strategy for the Eastern and Midland Region (2019)**

The Strategy supports the implementation of Project Ireland 2040 and the National Planning Framework (NPF).

RPO 3.2 promotes compact urban growth and targets at least 50% of all new homes to be built, to be within or contiguous to the existing built-up area of Dublin city and suburbs and a target of at least 30% for other urban areas.

RPO 3.3 notes that Local authorities shall, in their core strategies, identify regeneration areas within existing urban settlements and set out specific objectives relating to the delivery of development on urban infill and brownfield regeneration sites and provide for increased densities as set out in the national policy.

Regional Policy Objective 4.3. supports the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built-up area and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport.

RPO 5.4. - “Future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and qualitative standards as set out in the ‘Sustainable Residential Development in Urban Areas’, ‘Sustainable Urban Housing: Design Standards for New Apartments’ Guidelines and ‘Urban Development and Building Heights Guidelines for Planning Authorities’.

#### **5.2.5. Transport Strategy for the Greater Dublin Area 2016-2035**

The Transport Strategy for the Greater Dublin Area 2016-2035 provides a framework for the planning and delivery of transport infrastructure and services in the Greater Dublin Area (GDA). It also provides a transport planning policy around which other agencies involved in land use planning, environmental protection, and delivery of other infrastructure such as housing, water and power, can align their investment priorities.

The Strategy sets out the necessary transport provision, for the period up to 2035, to achieve the above objective for the region, and to deliver the objectives of existing national transport policy, including in particular the mode share target of a maximum of 45% of car-based work commuting established under in “Smarter Travel – A Sustainable Transport Future”.

#### **5.2.6. Section 28 Ministerial Guidelines**

Having considered the nature of the appeal, the receiving environment, the documentation on file, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009) (the 'Sustainable Residential Development Guidelines').
- Design Manual for Urban Roads and Streets (DMURS) (2019).
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2022) (the 'Apartment Guidelines').
- Urban Development and Building Height, Guidelines for Planning Authorities (2018) (the 'Building Height Guidelines').
- The Regulation of Commercial Institutional Investment in Housing May 2021 Guidelines for Planning Authorities

### **5.3. Natural Heritage Designations**

- 5.3.1. The site is not located within or close to any European site, an Appropriate Assessment Screening Report was submitted with the planning application.

### **5.4. EIA Screening**

- 5.4.1. The scale of the proposed development is well under the thresholds set out by the Planning and Development Regulations 2000 (as amended) in Schedule 5, Part 2(10) dealing with urban developments (500 dwelling units; 400 space carpark; 2 hectares extent), and I do not consider that any characteristics or locational aspects (Schedule 7) apply. I conclude that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party grounds of appeal can be summarised as follows:

#### Neighbouring residential amenity

- Between 17 and 27 metres represents the separation distance between upper floors of development to the north, this is acceptable for an urban location. Of the 12 units that face north, only three have living room windows facing north, alternative design submitted with the appeal only has one living room window facing north. It is unlikely that north facing balconies will be used by future occupants, for any length of time, resulting in no adverse impacts for neighbouring development. Residential units will replace a public house and so levels of noise and nuisance will be much less.
- The overall height of the development at 14.3 metres is below the development plan maximum for the area. With reference to overshadowing and the negative conclusions reached by the planning authority, a sunlight/daylight/overshadowing report was prepared and submitted with the application. The reports prepared by DK Partnership show results that are within the limits of the relevant guidelines, there will be no adverse effects to neighbouring property as a result of the development.

#### Residential Private Amenity Space

- For an urban infill site, the Apartment Guidelines 2020 state that private amenity space requirements can be relaxed, subject to good design quality. Both the one bed (6.1 – 6.7 sqm) and two bed units (7 – 21.5 sqm) provide in excess of the minimum private amenity space required. However, the spaces have been delivered in two areas, one on the external façade and also internal to the courtyard.
- The communal open space exceeds the requirements by more than 100 sqm.

#### Poor Outlook of North Facing Units

- Units on the northern elevation provide some degree of passive overlooking of the laneway and this is a positive design feature. In addition, views to the north from proposed units will be across to rear gardens and this provides some amenity.

#### Daylight/sunlight to apartments and communal space

- Three sunlight/daylight assessment reports were submitted with the application. Proposed apartments that were tested at lower levels met standards. The communal open space in the courtyard does not meet the target values, however the roof garden exceeds target for sunlight. The proposed internal communal space provides a sheltered and overlooked play area and should not be viewed in isolation from the rooftop space.

#### Consistency with Apartment Guidelines and Development Plan

- Given the site is located in a central and or accessible urban location, the proposal complies with all of the following:
  - SPPR 1 – 50%- are one bed, 50% are two bed, the maximum number of one bed units is not exceeded.
  - SPPR 2 – as an urban infill site, SPPR 1 can be relaxed. In any case, SPPR 1 has been met.
  - SPPR 3 – all units exceed the minimum floor areas, by more than the 10% in every case.
  - SPPR 4 - all units are dual aspect.
  - SPPR 5 – there are no ground floor apartments, but upper floors have floor to ceiling heights of 2,65 metres.
  - SPPR 7,8 and 9 – not relevant.

#### Responses to Internal Reports

- With regard to the concerns raised by the EHO, AONA Environmental Consultants have prepared a report that addresses noise and odour matters. It can be demonstrated that the proposed development can be accommodated adjacent to commercial activities and some glass balconies can be extended up to 1.5 metres.

- In terms of transportation issues, a gate can be erected to close off the access laneway, the functioning of the laneway for vehicles and pedestrians can be accommodated as laneway improvements are all DMURS compliant, a delivery management plan, car parking management plans can all be subject to a condition.

#### CGI Viewpoints

- Although the building will be visible from certain points, its design and building material specification will mean it is an attractive addition to the area.

#### Design of front façade at ground level

- The substation element only accounts for 6.6 metres of a 27 metre frontage with glazing and high quality materials. The residential entrance is separate to the retail entrance and lighting can be agreed, figure 4,1 refers.

The appeal is accompanied by a supplemental Traffic and Transport Report, an Odour Impact Assessment Report, Noise Impact Assessment Report, Sunlight Reception Analysis, Effect on Daylight Reception Analysis, Daylight Reception Report, numerous drawings with revisions in reference to the grounds of appeal (bin store access, window and room changes, balustrade provision and gated entrance)

## 6.2. Planning Authority Response

The planning authority notes the mislabelled sunlight/daylight reports and acknowledge that apartments receive adequate levels of light. However, concern remains at the internal courtyard and its below minimum performance and therefore the provision of communal amenity space is substandard and below that required by the guidelines.

Overshadowing impact upon residences to the north that within BRE guidelines, the results are noted,

An overbearing appearance still remains at the concerns initial remain, result in undue overlooking, excessive noise and disturbance.

The provision of a gateway is noted.

The planning report prepared by the planning authority adequately deals with all relevant issues and the decision is justified (to refuse permission).

### 6.3. **Observations**

Two observations have been received and reiterate concerns raised during the initial application and echo the report and decision of the planning authority, additional points can be summarised as follows:

- Concerns about overlooking, overshadowing and loss of light to number 60 Faussagh Avenue and other units that provide living over the shop accommodation.
- Existing commercial extractor fans operate, and their continued use may be inhibited by future occupants of the apartments. Analysis carried out by the appellant does not take into account the shelter provided by the new building with reference to wind and odour.
- Development potential will be impacted upon and construction works pose a nuisance.
- A Retail Impact Assessment has not been carried out and should have been.
- The revised drawings do not deal with any of the scale and design issues raised in the reasons for refusal.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. The main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Residential Amenities
- Appropriate Assessment
- Other Matters

### 7.2. Principle of Development

7.2.1. The Dublin City Development Plan 2022-2028 is the relevant statutory plan for the area. The zoning objectives for the area are set out in the City Development Plan. The site is zoned 'Z3' Neighbourhood Centre with an objective 'to provide for and improve neighbourhood facilities.'

7.2.2. Residential and retail developments are considered to be permissible uses, section 14.7.3 of the City Development Plan refers. I am satisfied that both residential use and retail use are acceptable in principle under the zoning objectives that pertain to the site and that there is policy support for residential and retail use at this location. Specifically, I note that the current development plan states in relation to the Z3 zoning that in the context of recent socio-economic trends and changes in consumer behaviour, such places are important in serving the needs of their local population and in delivering on the vision of Dublin as a 15-minute city. This is just such a case.

7.2.3. The planning authority are satisfied that the development as proposed is acceptable at this location, but express concerns about the site coverage and what it means in terms of preventing the adverse effects of overdevelopment. I note that the matter of site coverage and residential density do not concern the planning authority to the degree that the matter forms the basis to refuse the development. However, as stated by the planning authority the scale of development and how it impacts upon neighbouring properties has been assessed and issues that concern residential

amenity form the basis of refusal. I am satisfied that in the right circumstances, higher residential densities than neighbouring development would be appropriate at this location, close to social, commercial and transport infrastructure, subject to the checks and balances of good design. In principle, it is entirely appropriate that a development comprising a mix of retail and residential use can be accommodated at this location.

### **7.3. Residential Amenities**

#### **Introduction**

- 7.3.1. There are two components to the appeal on hand with regard to residential amenity. Firstly, the planning authority have refused permission because of the proximity of the development to residential properties along Liscannor Road to the north. Secondly, the below standard and poor quality of residential amenity on offer to future residents makes up the second reason for refusal. The planning authority based their assessment upon the documentation received with the planning application, however, the appellant points out that not all documentation was considered and specifically sunlight/daylight analysis was missed. The planning authority acknowledge the error but stand by the assessments made with respect to the development as a whole and reiterate that the scale and design of the development injures residential amenity for neighbours and offers poor quality accommodation for future occupants.
- 7.3.2. The appellant has addressed both reasons for refusal and points the Board to sunlight/daylight analysis that was already submitted to the planning authority and confirms their view that the development is acceptable. In addition, with respect to residential amenity in general, the appellant has provided a rationale for each of the aspects of the development that the planning authority saw fault with. The appellant has also submitted revised drawings to address particular issues expressed in the Planner's Report, and I have had regard to these as and where relevant.
- 7.3.3. In my assessment, I have separated residential amenity into two distinct areas, as it refers to neighbouring properties and to future occupants and this corresponds with the two reasons for refusal advanced by the planning authority.

#### **Residential Amenity of Neighbouring Properties**

- 7.3.4. The immediate area of the site is characterised by low density two storey terraced housing that dates from the 1950s. The wider area was laid out in the 1950s based around a geometric and curvilinear pattern of streets, with the catholic church at the centre and to the east and west neighbourhood retail facilities such as in the subject appeal site. Other areas of Dublin followed a similar pattern of development around this time and the community/commercial properties at these locations have served the locale. In this instance the existing neighbourhood centre has a number of functioning and vibrant commercial premises with the exception of the central public house element, it no longer operates and stands as a vacant property. The rear of the subject site is accessed by a laneway and the site boundary runs up to the rear garden boundaries of terraced housing to the north at Liscannor Road. The proposed apartment block will rise to four storeys and will be located more than 22 metres from the rear elevations of terraced housing to the north.
- 7.3.5. The planning authority refused permission because of the adverse effect on the residential amenities of homes to the north that would result from the scale and design of the development as proposed. Primarily, it is the overbearing appearance, loss of privacy and noise and disturbance from balconies that concerns the planning authority. The appellant disagrees, and details the generous separation distances involved, the moderate four storey height proposed and that the residential use now sought would be preferable to the existing/former public house use.
- 7.3.6. Taking each element of the first reason for refusal in turn: overbearing impact, undue overlooking and excessive noise and disturbance.
- 7.3.7. Overbearing impact – the proposed development will rise to four storeys, three of which will be residential floors with the requisite balconies, bedroom and living room windows facing across to existing residences to the north. In terms of the current development plan, I note that Appendix 3 sets out advice on how to site taller buildings in transitional zones and the principles closely follow those set out in the Urban Development and Building Height Guidelines. Table 3 of the development plan appendix sets out 10 objectives with over 40 detailed performance criteria to be used in the assessment of proposals for enhanced height, density and scale. Most of the performance criteria relate to how new development would fit into and add to the area in terms of scale, design and height. The planning authority are not overly

concerned about the height proposed, but more how the presentation of windows and balconies close to other homes would injure amenity.

- 7.3.8. I note that appendix 3 of the Development Plan with reference to height at the outer suburbs states that heights of 3 to 4 storeys will be promoted as the minimum. The applicant makes the point that the site is close to the Luas, a public transport corridor and in this respect, appendix 3 advises that particular regard must be had to ensure that proposals are of a coherent scale and provide a sustainable and viable extension to the existing urban fabric. The site has the ability to accommodate the moderate heights proposed, the development plan supports this and the planning authority do not disagree. However, overbearing appearance is raised as an issue by some observers and in my mind must be addressed. The impact of an overbearing appearance in terms of the built environment can be difficult to quantify. For existing residents, it is the thought of a new structure occupying space that was previously unoccupied and this is seen as an unacceptable intrusion.
- 7.3.9. The closest residential units to experience a sense of overbearing will be living over the shop units to the east and west along Faussagh Avenue and homes along Liscannor Road to the north. Firstly, in relation to adjacent units along Faussagh Avenue, these units already enjoy an open aspect to the north, and this will change if the development is permitted. However, the sense of an overbearing appearance is lessened by virtue of the partial nature of the view concerned. Units along Faussagh Avenue will still retain an open aspect directly northwards and hence any sense of an overbearing appearance will be noticeable but in my view marginal in terms of overall impact.
- 7.3.10. With reference to homes along Liscannor Road to the north, a separation distance of over 22 metres separates their rear elevations from that of the proposed apartments. In addition, the ground slightly rises upwards from the subject site towards the rear gardens along Liscannor Road and so the ground floor retail and service space has been cut into the slope and this results in relative ground level from garden to parapet wall of 13 metres. The impact of an overbearing appearance lessens with distance and in this instance over 22 and up to 30 metres separates the other nearest properties on the northern side of the site. It is unlikely that the addition of a four storey apartment building of up to 13 metres in height and over 22 metres away will result in an unacceptable level of overbearing. If permitted the four storey

apartment building will be a new feature in the townscape and especially when viewed from the rear of homes along Liscannor Road, but I am satisfied that the impact will not be so great so as to unduly injure the residential amenities of neighbouring residences. This is illustrated by the contextual elevations submitted by the applicant that clearly show the dual relationship of height and separation distance. To that end, I am satisfied that the building as proposed will not present a seriously injurious level of overbearing appearance for adjacent residents.

7.3.11. Undue overlooking – loss of privacy can be a factor if new development is situated close to existing homes and excessive overlooking would result. In this instance, the proposed development will present balconies and habitable room windows that will look directly towards the rear of properties along Liscannor Road. I have outlined that the at the closest point at least 22 metres will separate opposing living room windows. In a suburban setting with conventional houses, the standard of at least 22 metres to separate rear elevations of houses was the norm and most development plans would advise this as the minimum level of separation distance. In this instance, at least 22 metres is maintained and up to 30 metres provides an acceptable level of separation to maintain appropriate levels of privacy. For example, I note that a two or three storey house would provide the same levels of overlooking opportunities to the rear gardens of neighbouring property as would an apartment building. The only major difference is the provision of balconies on upper levels. In this respect I note that the appellant has provided amended drawings to tackle issues of overlooking at upper floors with the omission of living room spaces for bedroom spaces. In my view these amendments are not necessary as I do not anticipate that there will be excessive levels of overlooking, given the separation distances involved.

7.3.12. Excessive noise and disturbance – the planning authority have not quantified the increase in noise or disturbance that would accrue from the provision of apartment units on this site. The appellant points out that a residential use is preferable to the existing public house use and in addition, the operation of the retail space will be controlled by a delivery management system.

7.3.13. It would appear to me that the planning authority are concerned that the occupation of balconies by their occupants could lead to the types of noise and activity that might ordinarily take place at garden level in a conventional suburban layout. In this case the normal activities associated with a garden will now take place at upper

floors. This is not an unusual departure for apartment units close to existing housing and an accepted form of how densification can sometimes react with the existing suburban condition. Similarly, with overlooking and overbearing appearance, I do not anticipate that the degree of noise and activity associated with apartment living would necessarily injure the residential amenities of existing houses in the vicinity. It must also be borne in mind that the neighbourhood centre as a whole occupies a large space, where the rear yards are currently used for the activities associated with premises along Faussagh Avenue, such as deliveries, recycling and stripping down pallets amongst other things.

- 7.3.14. Sunlight/daylight/overshadowing – Issues that concern the impact of the development on neighbouring property with regard to sunlight/daylight/overshadowing have not been raised in the first reason for refusal. But such issues did form the basis for the second reason for refusal with respect to future occupants alone, not neighbouring property. I note that the planning authority initially thought that such analysis had not been submitted by the applicant, it was and this has been acknowledged. Some submissions on the initial planning application and observers to this appeal have mentioned in passing the possible impact of overshadowing and loss of sunlight/daylight. The appellant refutes these concerns and points to analysis already carried out that demonstrates no adverse impacts for adjacent residential units.
- 7.3.15. Though not expressly mentioned in the first reason for refusal, I am satisfied that the relationship of a new development on sunlight/daylight/overshadowing is relevant in this instance. In addition, I am satisfied that this is not a new matter to consider and the issue of light can be comfortably dealt with within the subject matter of residential amenity in its broadest forms. To be clear, all the requisite information is on file to reach a conclusion in relation to impacts on light, the applicant has prepared reports, the planning authority acknowledge them and observers have had sight of them.
- 7.3.16. There are three reports to consider and they have been prepared by DKPartnership in accordance with the relevant BRE/BS/CIBSE guides on daylight and sunlight. In the case of the effect of the development on neighbouring residences, the report entitled 'Effect on Daylight Reception Analysis' is the most relevant. This document identifies sensitive receptors, image 5.1 refers, and I am satisfied that the points selected are the most relevant. In this report the applicant sets out studies in relation

to skylight levels to neighbouring accommodation, in particular habitable rooms. I am satisfied that the report has been prepared to an acceptable standard, in line with current national and local planning advice with regard to sunlight/daylight assessments. Vertical Sky Component (VSC), this is a measure of how much direct daylight a window is likely to receive. The Vertical Sky Component is described as the ratio of the direct sky illuminance falling on the vertical wall at a reference point, to the simultaneous horizontal illuminance under an unobstructed sky. A new development may impact on an existing building, and this is the case if the Vertical Sky Component measured at the centre of an existing main window is less than 27%, and less than 0.8 (20%) times its former value.

7.3.17. The report concludes that in nearly all cases some impact would be experienced but that it would be within guideline limits. Two receptors, immediately east and west of the of the new development at 'S' and 'R' respectively, recorded a change factor of 0.78, marginally below minimum guidelines. The report concludes that although habitable rooms 'S' and 'R' fall slightly below minimum guidelines, occupants would not perceive such a minute reduction in VSC. The findings of the report with respect to VSC are an accurate assessment of the impact of the development on neighbouring habitable rooms. I acknowledge that two habitable rooms immediately east and west of the development will fall slightly below targets, but I am satisfied that the impact will be imperceptible and will not seriously injure residential amenity such as it currently exists.

7.3.18. A third report entitled 'Sunlight Reception Analysis' looks at the amount of direct sunlight that strikes amenity spaces, image 6.1 and table 6.1 both refer. I am satisfied that the requisite garden spaces have all been tested. Direct sunlight and consequently the amount of shadow that effects an amenity space is demonstrated in tabular format and illustrated in appendix A by diagrams showing shadow cast, but not in enough detail to be useful. However, I am satisfied that the results produced by the report are accurate and show that rear amenity spaces will not be adversely impacted upon by the development as proposed. These are the results that I would have expected to have found, given the large separation distances between the four storey apartment building and the houses and commodious gardens along Liscannor, Killala and Dunmanus Road.

- 7.3.19. The Sunlight, Daylight and Overshadowing analysis submitted by the applicant provides sufficient information to assess the proposal in terms of the daylight, sunlight and overshadowing impact of the development on existing development adjoining the site, which is all residential in nature. The information on file demonstrates that existing dwellings will have access to sufficient levels of daylight and sunlight post development of the site as proposed. In circumstances where levels fall below minimums, (habitable rooms 'S' and 'R'), the BRE standards are only slightly missed and no perceptible impact is likely to result. The level of overshadowing generated by the development in relation to adjoining properties does not give rise for concern. This is because the overall design, scale and pattern of proposed development has had sufficient regard to the existing pattern of development in the area.
- 7.3.20. It is noted that there is likely to be instances where judgement and balance of considerations apply. To this end, I have used the Guidance documents referred to in the Ministerial Guidelines and within the Dublin City Development Plan 2022-2028 to assist me in identifying where potential issues/impacts may arise. I have considered whether such potential impacts are reasonable, having regard to the need to provide new homes within the City area, and to increase densities within zoned, serviced and accessible sites. I have also taken into account the potential impact on existing residents from such development and it is not significantly negative and has been adequately mitigated by design. Existing units will receive adequate sunlight and daylight, in accordance with the BRE Guidance. I have no reason, therefore, to recommend to the Board that permission be refused on the issue of access to light.

### **Residential Amenity for Future Occupants**

- 7.3.21. The second reason for refusal advanced by the planning authority relates to the quality and standard of accommodation for future residents. The planning authority point out that the quantity and quality of private amenity space combined with a poor outlook for north facing units is not acceptable. This is compounded by the provision of a shared central courtyard space that will not receive adequate levels of sunlight/daylight. In addition, it could not be determined whether apartment units will receive adequate levels of light. In relation to all other apartment living requirements as set out in the Apartment Guidelines (2022) and chapter 15 of the current

Development Plan, the planning authority accept that these criteria have all been met. That is to say, the apartment design standards, such as minimum floor areas, unit mix, dual aspect, floor to ceiling heights and lift/stair cores have all been complied with. In terms of units the problem lies with the under provision of private amenity space and indeterminate sunlight/daylight levels. The appellant states that in relation to private amenity space, though the main balcony is less than required, when combined with a secondary balcony space, the minima are actually exceeded. In relation to sunlight/daylight standards, ADF targets were met by all habitable rooms along the bottom two residential floors. In relation to the shared communal courtyard, the appellant states that sunlight/daylight analysis shows that the space works well and when combined with the rooftop garden, communal open space is more and better than required.

- 7.3.22. I have examined the drawings submitted with the application and I am satisfied that the proposed apartments meet most of the requirements of the Apartment Guidelines (2022) and chapter 15 of the current Development Plan. The planning authority acknowledge that they missed the documentation in relation to sunlight/daylight as it had been mis-labelled. Similar to the planning authority analysis, two aspects of the proposed apartments raise a concern for me, and they are the configuration of the private amenity spaces and the quality of the central courtyard communal space.
- 7.3.23. I have examined the sunlight/daylight analysis prepared by the applicant and acknowledge that satisfactory results have been achieved for the units proposed. This is not surprising, given the dual aspect design of the units concerned and the limited building height proposed. If the planning authority had taken into account the detailed findings in relation to sunlight/daylight as submitted with the application, a different outcome may have resulted. In any case, I see no value in interrogating the sunlight/daylight analysis in any depth as it relates to the appeal on hand. I am satisfied that the appropriate expert advice as per the quantitative performance approaches to daylight provision outlined in the BRE/BS guidance documents, were undertaken by the development proposer and offer the capability to satisfy minimum standards of daylight provision. Target values are met for all units and this is satisfactory.

- 7.3.24. Private amenity space – the appellant explains that the provision of private amenity space exceeds that required by the guidelines and development plan in terms of cumulative floor space. It is stated that this has been achieved by splitting private amenity space between the back and front of units to form two spaces. This is the design rationale that the appellant makes to explain that minimum requirements have been met and that the quality of spaces is high.
- 7.3.25. The current City Development Plan mirrors the design criteria set out in the Apartment Guidelines in relation to apartment development. In the first instance, I note that the Apartment Guidelines set out advice in relation to private amenity space, sections 3.35 to 3.39 and appendix 1 of the guidelines refer. I can see that balconies have been provided in the traditional sense for all units and they are at least 1.5 metres in depth, this is acceptable. However, there are certain aspects of the balcony design that do not meet the advice provided by the guidelines and these are as follows:
- For most units the balconies do not adjoin and have a functional relationship with the main living areas of the apartment, all external balconies associated with centrally located units are all accessed from a bedroom.
  - Though a minimum depth of 1.5 metres has been provided in relation to external balconies, a useable length to meet the minimum floor area requirement under the guidelines has not been provided. In this case 5 sqm is required for one bed units and 6 to 7 sqm is required for two bed units.
- 7.3.26. The appellant points out that the guidelines are not explicit in the requirement to provide a single space that meets the minimum floor areas for private amenity space, as set out in appendix 1. Hence, the provision of a secondary or additional space at the entrance to the apartments, when combined this exceeds the requirements. In addition, the appellant points out that the quality of these front spaces is enhanced because it provides overlooking opportunities to the courtyard space adjacent and below.
- 7.3.27. In my mind the guidelines are quite clear, a private amenity space must be provided in an area with the dimensions to meet the minimum requirements, this is not the case with most of the units proposed. In addition, outward facing balconies for centrally located units are accessed from a bedroom rather than from the main living

area, such as a kitchen/dining or sitting room. In order to increase overall private amenity space areas for each apartment, the applicant has provided an additional space to the front of each apartment, either at the entrance door or off bedrooms. The secondary spaces associated with the two bed units are quite large, the recessed secondary spaces associated with the one bed units are no more than a threshold or porch space that opens onto a shared walkway.

- 7.3.28. On the whole, I am not satisfied that the fracturing of private amenity spaces is an acceptable design choice in this instance and at this location. Whilst the two bed units could be considered to comply with the guidelines where larger apartments may include wrap around and/or secondary balcony, the one bed units do not. I am concerned that 12 of the units, or half of the proposed development results in a substandard and poor quality arrangement of private amenity space, this is not satisfactory.
- 7.3.29. Poor outlook – apartment units to the north of the site will look out onto the back gardens and rear elevations of housing in the vicinity. Whilst not attractive in the traditional townscape sense, this is a normal urban condition. I am satisfied that the separation distances involved and the preponderance of green spaces associated with rear gardens in the area will provide an entirely expected urban outlook. In any case the proposed units are dual aspect and though the northern elevation will be the main aspect for some, it is not the only view available to the future occupants.
- 7.3.30. Communal Open Space – the development provides two areas of communal open space, one as a courtyard space of 87 sqm and the other as a rooftop space of 155 sqm. Added together, both spaces exceed the minimum area needed in relation to communal amenity spaces, appendix 1 of the guidelines refers. However, the planning authority are concerned that the centrally located courtyard, would not receive enough sunlight/daylight to make it a pleasant or usable space. In addition, reliance on the rooftop space alone for adequate levels of light is not satisfactory and may see the rooftop space little used. The appellant admits that the central courtyard space does not meet the target values set out by the BRE guidelines, but the rooftop space does and should be considered. In addition, the appellant points out that the central courtyard space is sheltered, well overlooked and will provide a different type of space not reliant on high levels of light, that the rooftop space provides.

7.3.31. With reference to communal amenity space the guidelines state that such areas should be accessible, secure and usable. All of these factors may be applicable to both spaces. On the one hand, the courtyard space is safe and secure, it is diminutive and not well lit by natural light. On the other hand, the rooftop garden is bathed in light, but not that accessible and not overlooked by other units. However, I am aware that the guidelines do make allowances and refer to the provision of different types of communal amenity space and in this regard I find that the proposed development meets this flexibility. In addition, the guidelines state that on urban infill schemes on sites of up to 0.25ha (site is 0.19 ha), communal amenity space may be relaxed in part or whole, subject to design quality. Furthermore, the current City Development Plan echoes the requirements of the Apartment Guidelines and in my mind the proposed communal amenity spaces would meet sections 15.9.8 and 15.9.8 of Chapter 15 *Development Standards* of the development plan.

7.3.32. The provision of two communal amenity spaces for 24 apartment units on a small urban site is a positive design choice. Though, the centrally located courtyard space is poorly lit by natural light it is well overlooked, centrally located and accessible. I am satisfied that the central courtyard will be well used, however, it is unfortunate that the lift/stair core was placed on the western side, because if placed to the east, then more valuable west light may have been allowed to access the space. The rooftop communal space offers a lot of natural light and though its use will require management and monitoring, I am satisfied that it will provide a useful element of communal open space for residents.

7.3.33. Privacy for Future Occupants - I note that the appellant has not made reference to the dimensions of the central courtyard and what these dimensions mean for the privacy of future occupants. The opposing living room windows of the one bed units will be 9 metres apart and so too will be the bedroom windows of two bed units. Nine metres is a minimal distance and far less than the traditional standard of 22 metres. The current Development Plan recognises that 22 metres may not always be obtainable in apartment development and reduced separation distances may be acceptable, section 15.9.17 of the plan refers. Neither the Apartment Guidelines nor the Building Height Guidelines set a blanket restriction on separation distance preferring performance based standards. There is flexibility in how separation distances in apartments should be approached. That being so, I find that 9 metres is

a very minimal separation distance between units, particularly when there is no offset, deflected views or screening proposed. I am not satisfied that an adequate level of detail has been applied to the design of the apartments to minimise the potential for loss of privacy for future occupants, the development does not perform well in this respect and impacts upon future residential amenity.

### **Residential Amenity Conclusion**

- 7.3.34. The first reason for refusal cited issues of overbearing impact, undue overlooking and excessive noise and disturbance because of the combination of height, number of windows, balconies and living areas proposed to the south of homes along Liscannor Road. Given the foregoing, I am satisfied that this will not be the case. The proposed apartment building of four storeys is located on an urban infill site with sufficient separation distances to avoid any adverse impacts from overbearing appearance or overlooking. In addition, I am not convinced that the provision of balconies and living room windows to a residential building would create a significant amount of noise and disturbance that would impact existing residential amenities.
- 7.3.35. The second reason for refusal refers to deficiencies in private amenity space, northerly outlook and communal amenity space. In terms of communal amenity space, I am satisfied that this has been provided to an acceptable standard and quality. The outlook provided to half of the apartment units will be an entirely predictable urban condition, that being the rear elevations and back gardens of other houses combined with an inner courtyard aspect that is south facing and this is acceptable. However, I am not satisfied that 12 of the apartments, all one bed units, have been provided with private amenity space that meets the advice provided by the Apartment Guidelines or the City Development Plan. I do not agree with the appellant and their contention that when combined the two private spaces exceed the requirements, because I do not consider the recessed space at the front door to be a usable and effective private amenity space.

### **7.4. Appropriate Assessment**

- 7.4.1. I note that an appropriate assessment screening report was submitted with the application. It notes the nearest Natura 2000 sites, table 1 of the report prepared by Altamar Marine and Environmental Consultancy refers. The report reasonably in my opinion concludes that there is no likelihood of any significant effects on Natura 2000

sites arising from the proposed development. Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a European site.

## **7.5. Other Matters**

- 7.5.1. Revised Drawings and Supporting Information - The appellant has produced revised drawings that show minor amendments and other information to meet the concerns raised by the planning authority in their planning report and other internal reports. In terms of the revised drawings, the amendments are minor and would not materially alter the development as a whole. Other information with regard to internal reports and matters to do with parking, servicing, access laneway gate, ground floor façade design, CGI viewpoints amongst other things, could all be addressed by condition.
- 7.5.2. Noise and Odour – observers have raised concerns about the imposition of apartment development and the impact residents with complaints would have on the existing running of businesses that rely on external extractor fans. These fans can produce noise and odour during operation and are controlled by the Environmental Health section of the Council. The appellant has submitted material to demonstrate that the matter will not be a concern, screening has been proposed and a report prepared by AONA Environmental Consultants demonstrates the proposed development will be an acceptable neighbour. I am satisfied that the principle of residential development can be accommodated at this urban infill location, any outstanding matters could be addressed by condition.
- 7.5.3. Development Rights – some observers have raised concerns about their ability to develop their site in the future if the scheme is permitted. If the development as proposed where permitted, with its current deficiencies (primarily unacceptable private amenity space), I see no specific impediments to develop adjacent sites. Any future applications would be assessed on their own merits of course, and I have already pointed out the outstanding issues in the current proposal now before the Board. I am satisfied that the principle of development on the appeal site would not by itself limit the potential of other sites to be developed in some fashion or other.

7.5.4. Retail Use – an observer has raised concerns about the viability of their business in light of yet another retail space at this location so close to other similar premises. I note that the planning authority have already considered as acceptable the suitability of a retail use at this location on lands zoned for neighbourhood centres. I note that the current development plan seeks the preparation of a retail impact statement in cases where retail development of 2,000 sq. m (net comparison floorspace) and 1,500 sq. m. (net convenience floorspace) is proposed. The subject appeal is for an area of 535 sqm in mixed use proposal, I see no reason to examine the issue of retail impact in any greater detail.

## **8.0 Recommendation**

8.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

1. The proposed development would not provide a satisfactory standard of residential amenity for future occupiers having regard to the configuration, quantity and quality of private amenity space and the unacceptable level of overlooking and lack of privacy between apartment units situated across the central courtyard. The proposed development would, therefore, be contrary to the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2022, Section 15.9.6 of the Dublin City Development Plan 2022-2028 and 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.

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Stephen Rhys Thomas  
Senior Planning Inspector

20 April 2023