



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314514-22

#### Development

Modifications are sought to the development permitted under ABP-309667-21 (P.A. Ref. No. 3619/20). In this regard, permission is sought to increase the number of permitted dwellings from 24 to 27 together with all associated site & services works.

#### Location

No.s 40, 41, 42, and 42A Clanbrassil Street Upper, Dublin 8.

#### Planning Authority

Dublin City Council South.

#### Planning Authority Reg. Ref.

4243/22.

#### Applicant(s)

Acragar Ltd.

#### Type of Application

Planning Permission.

#### Planning Authority Decision

Refused.

#### Type of Appeal

First Party.

#### Appellant(s)

Acragar Ltd.

#### Observer(s)

1. Geraldine Hall and Ciaran Rogers.

2. Caroline Butler.
3. Longwood Avenue Residents.

**Date of Site Inspection**

11<sup>th</sup> day of September, 2023.

**Inspector**

Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. The appeal site relates to the urban plots of No.s 40, 41, 42 and 42A Clanbrassil Street Upper in Dublin 8 (Note: site area of 0.08ha). These urban plots are located on the eastern side of Clanbrassil Street (R137) c57m to the north of Robert Emmet Bridge/Grand Canal and c90m to the north of Clanbrassil Street Uppers junction with Harolds Cross Road (R137), Grove Road (R111) and Parnell Road (R111) in the Dublin city suburb of Portobello.
- 1.2. At the time of site inspection, the site was an active construction site with an envelope of what has the appearance of a part four storey and part five storey building fronting Clanbrassil Street Upper present.
- 1.3. Running along the road frontage with Clanbrassil Street Upper there is a cycle lane and to the immediate north is a Dublin Bus Stop (ID No. 1290). This accommodates Dublin Bus Routes No.s 9, 16, 16D, 49 and 54A). There are remnants of a historic granite stone boundary also present along this frontage.
- 1.4. The rear boundary of the site adjoins the rear access laneways on the opposite side of which are the garages and rear gardens of Longwood Terrace. Garden Cottages which consist of modest single storey terraced cottages with front gardens are located along a narrow access lane extending from Clanbrassil Street Upper westwards as far as an infill apartment development is at the northern end of the site. There is a high rubble stone wall along the southern side of this lane. A row of single storey 19th Century period cottages that front onto Garden Lane directly north of the site and face directly onto the northern boundary of the site (Note: Garden Terrace).
- 1.5. To the immediate south of the site are two storey mixed use period buildings that address the eastern side of Clanbrassil Street Upper. The building height is two storeys in nature until the corner of Clanbrassil Street Upper and Windsor Terraces where there is a mixed use mainly four storeys building that contains a car show room at its ground floor level southwestern corner (Note: Ken Lawford Motors) and apartments over. Robert Emmet Bridge is to the immediate south of this building. To the immediate north of the aforementioned Garden Terrace the single storey height increases to mainly two storeys with the buildings addressing Clanbrassil Street Upper having a mixed use and period character. On the opposite side of Clanbrassil Street is a terrace of three-storey brick residential dwellings dating from the late 20th Century.

There are a few vacant, underutilised, and poorly kept structures in the vicinity of the site.

- 1.6. The surrounding area has a mixed-use character, and its building stock includes a variety of architectural style including period buildings.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for modifications to the previously approved permission ABP-309667-21 (P.A. Ref. No. 3619/20). Modifications are to include the addition of 3 no. extra units achieved by the way of internal changes to the third floor and an additional floor to the previously granted Block 2 bringing the total no. of floors of the building from 4-storey to 5-storey and increasing the total units in the proposed development from 24 no. units (which consisted of 17 no. one-bed & 7 no. two-bed) to 27 no. units consisting of 19 no. one-bed, 7 no. two-bed, 1 no. 3-bed and addition of residential bin store. All associated signage, site works, drainage, street lighting and landscaping are as per the previously granted scheme.

- 2.2. The planning application is accompanied by the following documentation:

- Cover Letter.
- Design Statement.
- Schedule of Units.
- Part V Validation Letter.
- Mechanical and Electrical Planning Information.
- Civil and Structural Planning Information.
- Fire/DAC Report.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. By order dated the 4<sup>th</sup> day of August, 2022, the Planning Authority issued a notification to **refuse** planning permission for the following single stated reason:

*“Having regard to the design, scale, mass and bulk of the proposal and the proximity of the development to adjoining properties, it is considered that the proposed development would constitute overdevelopment of the site and would have an excessively overbearing, overshadowing, and overlooking effect on adjoining properties. The proposed development fails to integrate or be compatible with the design and scale of the adjoining buildings and as a result, would seriously injure the visual amenities of the streetscape and would have an adverse impact on the character of the area. 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, would be contrary to the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area.”*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report**

The Planning Authority’s Planning Officer’s report is the basis of their decision to refuse planning permission for the proposed development.

This report noted that the approved scheme permitted by the Planning Authority and the Board on appeal (Note: ABP-309667-21/P.A Ref. No. 3619/20) followed on from previous applications for taller buildings that were deemed to be of a design, scale and layout that was inappropriate for the site. With previous proposals giving rise to overdevelopment and excessive residential amenity for adjoining properties, in particular those at Garden Terrace.

Of concern to the Planning Officer was that this proposal seeks to raise the approved building height from 13.230m to 16.6m and it is not accompanied by any visual assessment including photomontages. It is considered that the five-storey height would result in a significant transition from existing development in its context. It was also considered that the site does not lend itself to the height now proposed given the serious residential and visual amenity impacts it would give rise to.

Further concern is raised that no daylight and sunlight assessment has been provided with this application and concern is raised that the additional height would give rise to

a loss of ADF for properties in its vicinity, in particular the residential properties of Garden Terrace.

This report concludes with a recommendation for refusal.

### 3.2.2. **Other Technical Reports**

**Transportation:** This report raised the following concerns:

- Concern is raised that the proposed provision of residential bin-store at ground floor level has been compromised and in turn the available space as well as provision for bicycle parking has been dramatically reduced.
- The risk of overspill car parking is a concern.
- It is their preference that the scheme include car share spaces on site.
- The site is within proximity to public transport and the zero-car parking provision is generally acceptable in such a context.
- Concludes with a recommendation for **further information** with this relating specifically to cycle and bin related concerns.

**Environmental Health Officer:** No objection, subject to safeguards.

**Engineering:** No objection, subject to safeguards.

### 3.3. **Prescribed Bodies**

3.3.1. None.

### 3.4. **Third Party Observations**

3.4.1. 7 No. Third-Party Observations were received by the Planning Authority during its determination of this application. The main concerns raised correlate with those raised by the Third-Party Observers in this appeal case. The issues raised included:

- Residential amenity diminishment concerns by way of reduced daylight, sunlight, and increased overshadowing through to increased overlooking.
- It is contended that the scheme as permitted was agreed with the residents.

- The proposed development as modified would place an increased burden on limited car parking spaces in the vicinity.
- The additional building height is inappropriate to its setting and if permitted it would be visually overbearing.
- No loading/unloading provision for occupants of this building.
- Inadequate documentation provided.
- The applicant puts forward an unsubstantiated claim of having a right of way in their benefit over the adjoining lane behind Longwood Avenue.
- The proposed development would give rise to visual and built heritage amenity diminishment.

## 4.0 Planning History

### 4.1. Recent and Relevant

- **ABP-309667-21 (P.A. Ref. No. 3619/20)**

On the 30<sup>th</sup> day of July, 2021, the Board **granted** permission for the demolition of existing buildings, (except for part of No 39 Clanbrassil Street Upper, a two storey take-away restaurant) and construction of mixed-use development of fifty-two apartments in two blocks with a maximum four storey height and associated works subject to conditions.

- **ABP-306031-19 (P.A. Ref. No. 3955/19)**

On the 20<sup>th</sup> day of March, 2020, the Board **refused** planning permission for a mixed-use development including 36 no. apartments, takeaway restaurant, retail unit and all associated site works. The stated reasons and considerations read:

*“1. Having regard to the design, scale, and layout of the proposed development, it is considered that the proposed development would constitute overdevelopment and would be excessively overbearing on adjoining properties to the north. The Board is not satisfied that the overshadowing and overlooking effects on the properties on Garden Terrace had been sufficiently mitigated, and considered that the proposed development would seriously injure the residential amenities of property*

*in the vicinity, and would therefore, not be in accordance with the proper planning and sustainable development of the area.*

2. *It is considered that the number of apartments in Block A would receive inadequate daylight and sunlight given the proximity to Block B and would therefore seriously injure the residential amenities of future occupants/residents, and accordingly would be contrary to the proper planning and sustainable development of the area.*
3. *The Board is not satisfied that the developer has demonstrated that they can provide adequate arrangements for refuse collection, access for emergency vehicles and deliveries, and consider that the proposed development would endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.”*

4.1.1. I have had regard to the planning history of the site with the above two applications being of relevance to this appeal case. I note that the Planning Authority’s Planning Officer’s report provides a detailed overview of the planning history of the site. A copy of this report is attached to file.

#### 4.2. Other

- **P.A. Ref. No. 0367/22**

**No. 39 Clanbrassil Street Upper (Adjoining Site to the South)**

On the 13<sup>th</sup> day of December, 2022, an exemption certificate was **refused** for the demolition of the existing structure at No. 39 Clanbrassil Street and rebuilding of a new structure to match the previous. The given reason for refusal reads:

*“The proposed demolition of the building at 39 Clanbrassil Street Upper would contravene condition No.1 of DCC Reg. Ref. 3619/20 (ABP-309667-21) and DCC Reg Ref: 4249/22 which explicitly provided for retention of the subject building. Consequently, having regard to Article 9(1) Planning and Development Regulations 2001(as amended), Demolition of the structure is not exempted development as it would contravene a condition attached to a permission.”*

- **P.A. Ref. No. 4249/22**

**No. 39 Clanbrassil Street Upper**

On the 22<sup>nd</sup> day of September 2022 planning permission was **granted** subject to conditions for change of use for the front part of the existing 2 storey take-away

restaurant building (vacant). The application seeks modifications to Block 1 of the previously granted permission DCC Reg. Ref. 3619/20 (ABP-309667-21). Block 1 comprised of a part 2 storey/ part 2 storey plus pitched roof building at 39 Clanbrassil Street Upper accommodating 1 No. take-away restaurant unit at ground & 1st floor level (including existing structure fronting onto Clanbrassil Street Upper) and 4 No. apartments (4 No. 2 Bedroom 2 storey own-door duplex apartment units) extending along Orr's Terrace. The modifications seek change of use of previously granted take-away restaurant use to residential use to provide 1 No. Duplex Studio over ground and first floor. The proposed works include removal of existing signage and provision of a new entrance door to the front. All with associated bin store, bicycle store, and associated site works.

- **P.A. Ref. No. WEB1417/22**

**No. 43 Clanbrassil Street Upper (adjoining property to the north located to the immediate west of Garden Terrace).**

On the 5<sup>th</sup> day of August, 2022, retention permission was **granted** for the change of use of parking area (18.8 sq.m.) to outdoor cafe terrace (including associated timber fencing and pergola structure).

## 5.0 Policy Context

### 5.1. National

- **Project Ireland 2040 - National Planning Framework**

Project Ireland 2040 links planning and investment in Ireland through the National Planning Framework (NPF) and sets out a ten-year National Development Plan (NDP). This document encapsulates the Government's high-level strategic plan for shaping the future growth and development of Ireland to the year 2040, and within this framework Dublin is identified as one of five cities to support significant population and employment growth.

The NPF supports the requirement set out in the Government's strategy for 'Rebuilding Ireland: Action Plan for Housing and Homelessness', 2016, to ensure the provision of a social and affordable supply of housing in appropriate locations.

National policy objectives (NPOs) for people, homes and communities are set out under chapter 6 of the NPF. Of note NPO 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

Other NPOs of relevance to this appeal include NPOs 3(a) which seeks to provide 40% of homes in existing settlement footprints; 3(b) which seeks to provide 50% of new homes in the five largest cities, including Dublin; 4 which seeks attractive, liveable, and well-designed urban places; 13 which sets out development standards; 27 which deals with the matter of transport alternatives) and 35 which deals with the matter of increased densities.

Overall, the NPF seeks densification, compact growth, and efficient use of serviced land at appropriate locations.

- Relevant Section 28 Ministerial Guidelines and other national documents include:
  - The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020, updated December, 2022, and July 2023).
  - Urban Development and Building Heights, Guidelines for Planning Authorities (2018). These outline the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF.
  - Best Practice Guidelines for Delivering Homes, Sustaining Communities – Quality Housing for Sustainable Communities (2007).
  - Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009).
- Other planning guidance and strategy documents of relevance:
  - Climate Action Plan (2023). This plan refers to the need to reduce car parking, both for developments and on-street. Alternative construction materials should be substituted for high carbon products.
  - Places for People – National Policy on Architecture (2022).
  - Housing for All – A New Housing Plan for Ireland (2021).
  - Part V of the Planning and Development Act 2000 - Guidelines (2017).

- Rebuilding Ireland - Action Plan for Housing and Homelessness (2016).
- Building for Everyone: A Universal Design Approach (2012).

## 5.2. Regional Planning Policy

- 5.2.1. The 'Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy (RSES) 2019-2031' supports the implementation of Project Ireland 2040 and the economic and climate policies of the Government, by providing a long-term strategic planning and economic framework for the region.
- 5.2.2. RPO 3.2 of the RSES is considered relevant to this appeal. It promotes compact urban growth and sets out a target of at least 50% of all new homes should be built within or contiguous to the existing built-up area of Dublin city and its suburbs, while a target of at least 30% is required for other urban areas.
- 5.2.3. The site is also located within RSES defined Dublin metropolitan area, where it is intended to deliver sustainable growth through the Dublin Metropolitan Area Strategic Plan (MASP).
- 5.2.4. Key principles of the MASP include compact sustainable growth, accelerated housing delivery, integrated transport, and land use, through to the alignment of growth with enabling infrastructure.

## 5.3. Local

- 5.3.1. According to Dublin City Development Plan 2022-2028 the area of the appeal site forms part of a parcel of land zoned: 'Z1 – Sustainable Residential Neighbourhoods'. The zoning objective for such land is “*to protect, provide and improve residential amenities.*” In addition, Section 14.7.1 of the Development Plan sets out the following vision for Z1 zoned land:

*“The vision for residential development in the city is one where a wide range of high quality accommodation is available within sustainable communities, where residents are within easy reach of open space and amenities as well as facilities such as shops, education, leisure, and community services. The objective is to ensure that adequate public transport, in conjunction with enhanced pedestrian and cycling infrastructure, provides such residential communities good access to employment, the city centre and the key urban villages in order to align with the principles of the 15-minute city.”*

It further states that: “Chapter 5: Quality Housing and Sustainable Neighbourhoods, which deals with policies and objectives for residential development, making good neighbourhoods and standards, respectively, should be consulted to inform any proposed residential development (see also Chapter 15: Development Standards)” and that residential development is a permissible land use.

- 5.3.2. The site lies in close proximity to the north of Z2 and Red-Hatched Conservation Areas. These areas are recognised as areas that have conservation merit and importance and warrant protection through zoning and policy application. It is of further note that the red hatched area encompasses Robert Emmet Bridge and the Grand Canal corridor to the south of the site.
- 5.3.3. Policy QHSN10 of the Development Plan sets out that the Planning Authority will seek to promote sustainable densities with due consideration for design standards and the surrounding character. It refers to Appendix 3 of the Development Plan which it sets out provides guidance on urban density, compact growth, building height, plot ratios and site coverage.
- 5.3.4. The Development Plan includes several policies addressing and promoting apartment developments. These include policies: QHSN36, QHSN37, QHSN38 and QHSN39.
- 5.3.5. Section, 4.5.4 and Policy SC15 to SC17 of the Development Plan set out the Planning Authority’s strategy and criteria when considering appropriate building heights, including reference to the performance-based criteria contained in Appendix 3.
- 5.3.6. Other relevant sections of the Development Plan include the following:
- Section 4.5.2 - Approach to the Inner Suburbs and Outer City as Part of the Metropolitan Area (Policy SC8).
  - Section 4.5.3 – Urban Density (Policy No.s SC10, SC11, SC12 and SC13).
  - Section 4.5.9 – Urban Design & Architecture (Policy No.s SC19, SC20, SC21, SC22 and SC23).
  - Section 8.5.1 - Climate Change through Sustainable Mobility.
  - Section 9.5.1 – Water Supply and Wastewater.
  - Section 9.5.4 – Surface Water Management and Sustainable Drainage Systems (SuDS).

- Section 15.4 – Key Design Principles.
- Section 15.5 – Site Characteristics and Design Parameters.
- Section 15.8 - Residential Development.
- Section 15.9 – Apartment Standards.

#### 5.4. **Other – Development Plan Appendices**

5.4.1. The following are relevant:

- Appendix 1 sets out the Housing Strategy.
- Appendix 3 ‘Achieving Sustainable Compact Growth’.
- Appendix 5 ‘Transport and Mobility’ expands on the Sustainable Movement and Transport Framework’.
- Appendix 16 outlines guidance and standards in relation to ‘Sunlight and Daylight’.

#### 5.5. **Natural Heritage Designations**

5.5.1. None in the vicinity. In this regard I note that the nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024).

#### 5.6. **EIA Screening**

5.6.1. See completed Appendix 1 Form 1 attached to this report.

5.6.2. The development subject of this application falls within the class of development described in 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising over 500 dwelling units or over 10 hectares in size or 2 hectares if the site is regarded as being within a business district.

5.6.3. The project as lodged in summary consists of modifications to an existing permitted scheme which essentially seeks the increase in apartment units by way of the addition of an extra floor level thus raising the height of the permitted building from four storeys to five storeys as well as increasing the apartment unit no. from 24 to 27. As such this project falls below the threshold for triggering the need to submit an EIAR and having regard to the nature of the development comprising a significantly sub-threshold

residential development on residentially zoned infill/brownfield lands where public piped services are available there is no real likelihood of significant effects on the environment arising from the proposed development.

5.6.4. Therefore, having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there are no real likelihood significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

5.6.5. Conclusion: The need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

6.2. The First Party grounds of appeal can be summarised as follows:

- The Planning Authority's reasons for refusal could have been addressed by way of further information.
- The presumed impacts on Garden Terrace are disputable.
- The only change at third floor level is the provision of a duplex in place of a substandard one-bedroom apartment.
- There are no changes proposed to the façade addressing Clanbrassil Street Upper or Garden Terrace.
- The proposed additional floor level was provided with as much separation as possible from Garden Terrace.
- The intention of the design was to keep the building line/path of light the same as the granted development.
- The proposed development as modified would not be excessively overbearing, it would not give rise to undue overshadowing or overlooking of neighbouring properties, and it accords with local through to national planning policy provisions.
- The three additional apartment units would add positively to the existing context.

- This development has been designed as a low impact development which reflects its surrounding context whilst providing a contemporary response.
- The increase in density will further contribute to the surrounding area and provide opportunities for the aging population to downsize creating other housing opportunities in the area for families and working professionals.
- The Board is requested to overturn the decision of the Planning Authority.

### 6.3. **Planning Authority Response**

- 6.3.1. The Planning Authority's response concluded that the grounds of appeal would not justify a change in attitude towards the proposed development.

### 6.4. **Observations**

- 6.4.1. On the 4<sup>th</sup> day of October, 2022, an observation received from a Geraldine Hall and Ciaran Rogers seeks that the Board uphold the decision of the Planning Authority.

- 6.4.2. On the 27<sup>th</sup> day of September, 2022, an observation received by the Board from a Caroline Butler included the following comments:

- The proposed extra storey would detrimentally impact their home and garden by way of loss of sunlight and daylight. It would result in deep cast shadows on their property during certain times of the year and these impacts are not addressed by the applicant including in their appeal submission.
- The applicant offers no reason as to why the extra storey is justifiable against the context where it would directly impact adversely six to seven homes on the west side of Longwood Avenue by way of loss of daylight and overshadowing.
- Portobello is a historic conservation area and Clanbrassil Street as well as Richmond Street are important routes into the city with special character.
- The additional storey would be an unwelcome and at odds addition to its streetscape scene.
- There are no 3D renderings of the proposal to show how the extra storey would integrate with its setting.

- The extra storey would create an undesirable precedent for Clanbrassil Street and would cumulatively diminish its special character.

6.4.3. On the 27<sup>th</sup> day of September, 2022, an observation received by the Board from a Longwood Avenue Residents included the following comments:

- The proposed five storey height would result in a loss of residential amenity by way of diminishment of sunlight/daylight and overlooking on these properties.
- The additional height would be detrimental to the streetscape of Clanbrassil Street Upper and result in an undesirable precedent.
- The proposed development would place further pressure on parking spaces along Longwood Avenue.

## 7.0 **Assessment**

### 7.1. **Preliminary Comment**

7.1.1. Having carried out an site visit and having regard to all the documentation on file, the relevant local through to national planning policies provisions and guidance pertaining to the subject site and to the type of development proposed, the planning history of the site, together with the prevailing character of the site's setting, the nature and scale of the proposed development and the nature of existing as well as permitted development in the surrounding area and the significant lateral separation distance between the site and the nearest designated sites, I consider that the main issues relating to this application is the single reasons for refusal issued from the planning authority.

7.1.2. I note that this reason for refusal in summary relates to residential and visual amenity impacts that would arise from the proposed development alongside raises concerns that the proposed development, if permitted, would give rise to an undesirable precedent.

7.1.3. For clarity, having reviewed this appeal case I am satisfied that there are no other substantive matters for the Board to examine in this appeal case including but not limited to drainage, environmental through to Part V.

- 7.1.4. Notwithstanding this conclusion, as a precaution I propose to examine several sundry issues that arise from the Third-Party Observers submissions to the Board and the Planning Authority's Interdepartmental Reports that I propose to also address under the heading of 'Other Matters Arising' at the end of my assessment below.
- 7.1.5. In relation to such issues there are in my view concerns that arise that should the Board be minded to grant permission for the proposed development as sought that would in my view require further information. In particular, clarification that the required standard of bicycle parking spaces to meet the future needs of this mixed-use building, a building that is not served by any on site car parking provision through to car sharing spaces or the like, is needed.
- 7.1.6. I also note to the Board that this planning application was lodged and determined by the Planning Authority when the previous City Development Plan was in place. Additionally, the First Party also lodged their appeal, the Planning Authority and the Third-Party Observers responses were made when this previous plan was in place. Since this time the Planning Authority have adopted the Dublin City Development Plan, 2022-2028, under which the 'Z1' land use zoning objective of the site and its setting has not changed. As such the general principle of residential development which I note is a permissible land use on 'Z1' zoned lands under the City Development Plan remains unchanged.
- 7.1.7. In addition to this I note that the general principle of residential consolidation within the city's urban landscape is supported by the Core Strategy in this recently adopted Development Plan. With this strategy updated to align with regional and national planning policy provisions as well as guidance that seek that collectively seek to guide the spatial direction of future development and regeneration in the city in line with the principles of compact growth.
- 7.1.8. Furthermore, the proposed development also accords with Development Plan Policy QHSN6 which promotes and supports residential consolidation as well as sustainable intensification. In addition to City Policy QHSN10 of the City Development Plan which promotes residential development at sustainable densities throughout the city in a manner that accords with the Core Strategy subject to safeguards including high standards of design and architecture through to successful integration with the character of the surrounding area. As such the proposed modifications sought under

this application which would comprise of an increase in three residential units to a permitted mixed-use building is generally acceptable, subject to safeguards, including demonstrating no undue residential and/or visual amenities for properties in its vicinity or visual diminishment of its streetscape scene.

## **7.2. The Planning Authority's Reason for Refusal**

- 7.2.1. The proposed development seeks permission to modify a previous permitted mixed-use building permitted on appeal to the Board under ABP-309667-21 (P.A. Ref. No. 3619/20). In summary this grant of permission permitted the amalgamation of the urban plots of No.s 39, 40, 42, 42 and 42A Clanbrassil Street Upper and the demolition of the buildings and structures thereon to facilitate the proposed two mixed use buildings 'Block 1' and 'Block 2'.
- 7.2.2. I note that this previous application related to a larger site area of 1,150 square metres as it included the area associated with No. 39 Clanbrassil Street Upper. Whereas this planning application now before the Board on appeal relates to a lesser area of 885.4m<sup>2</sup>.
- 7.2.3. Having regards to the development permitted, it is of note that permission was granted for a four-storey building referred to as 'Block 2' with this building positioned on the northern side of the site. This permitted building contained commercial space at ground floor level addressing Clanbrassil Street Upper and 24 no. apartment units in the remainder of the building. This building also included a proposed additional modest setback from the laneway serving Garden Terrace to its immediate north as well as a communal open space area at grade facing centrally into Garden Terrace and the laneway serving this residential cul-de-sac. Thus, resulting in this building having a u-shape.
- 7.2.4. By way of the subject planning application now before the Board modifications are sought to this building as permitted. These modifications consist of alterations internally and externally to it in order to accommodate an additional three apartment units. With this including the provision of an additional floor level increasing the building height from four storeys to five storeys. Alongside resulting in a change to the unit mix to include the introduction of a three-bedroom apartment unit. Other ancillary amendments include the amendments to the bin store which appears to reduce the area associated with the cycle parking spaces for future occupants of the building.

- 7.2.5. The Planning Authority's reason for refusal considered that the design, scale, mass, and bulk of the proposed development, together with its proximity to other adjoining properties would constitute overdevelopment of the site and would give rise to an excessively overbearing as well as overshadowing and overlooking impact on adjoining properties.
- 7.2.6. It also considered that the proposed development failed to integrate or be compatible with adjoining buildings which in turn would seriously injure the visual amenities of the streetscape as well as would have an adverse impact on the character of the area.
- 7.2.7. In addition, further concern was raised in this reason for refusal that the proposed development would give rise to an undesirable precedent for other similar developments in the surrounding area.
- 7.2.8. For these reasons the Planning Authority concluded its reason for refusal that the proposed development would be contrary to the provisions of the Development Plan as well as the proper planning and sustainable development of the area.
- 7.2.9. The First Party Appellant refutes the Planning Authority's given reason for refusal of the proposed development sought under this application. They assert that the proposed development is consistent with local through to national planning policy provisions and guidance which collectively seek to support increased residential densities as well as taller buildings at locations well served by public transport. They further raise it as a concern that the Planning Authority did not provide them with an opportunity to overcome their concerns by way of a request of further information.
- 7.2.10. The Planning Authority in their response to the grounds of appeal consider that the First Party's appeal submission did not raise any new issues or would it justify a change to their determination.
- 7.2.11. The Third-Party Observers in this appeal case collectively support the Planning Authority's reasons for refusal and seek that the Board uphold this decision on the basis that these modifications would exacerbate the residential as well as visual amenity impacts that would arise from 'Block 2' on their properties as well as on this historic urbanscape where such additional height would be out of context and out of character with its historic streetscape scene.

7.2.12. In relation to residential and visual amenity impacts arising from the proposed development I propose to consider them under the main topics of concern i.e., overbearing, overshadowing, and overlooking in turn below. These considerations are against the context that the overarching land use objective for the site and the adjoining as well as neighbouring land to its north, south and west seeks to protect, provide, and improve residential amenities. As such a balance must be reached against protecting existing residential amenities in the context of providing as well as improving residential amenities in residentially zoned lands.

### 7.2.13. **Overbearing**

Concerns are raised that the additional floor level over the four storey 'Block 2' building approved by the Board under ABP-309667-21 would add to this building's visual overbearance in the context of the more modest in building height, scale, and volume residential properties in the vicinity of the site.

This concern is not only raised by the Planning Authority in their cited reason for refusal, but it is raised by occupants of Garden Terrace. A modest cul-de-sac of artisan single storey terrace cottages served by a limited in width pedestrian laneway from Clanbrassil Street Upper with these properties containing no rear private amenity space and served by a limited in area pocket of semi-private open space between their front facades and this laneway.

It is also a concern raised by occupants of properties of Longwood Avenue.

With these properties located near the western boundary of the site and with the rear of these properties separated from the western side of Block 2 by a modest in width service lane and the rectilinear in shape rear garden spaces.

The appellant considers that by positioning the proposed additional floor level over the southern side of Block 2 maximises the lateral separation distance from Garden Terrace and the proposed fifth floor level addition. At this setback location it is considered that the fifth-floor level would not be highly visible given the angle of view.

In relation to Longwood Avenue, it is not considered that the additional building height on the eastern elevation of the building would be visually overbearing given the limited increase in height and given the placement of the additional floor level on the southern side only.

Whilst I am cognisant that the City Development Plan in a manner that accords with national planning policy provisions including but not limited to the Building Height Guidelines recognises that the role of taller buildings can play an important role in the delivery of compact urban form for the city of Dublin. With the plan also acknowledging that taller buildings have the advantage of increasing density, promoting regeneration through to contributing to sustainable communities and neighbourhoods. Alongside the positive ability of such buildings in optimising sites which are well connected by public transport and have good access to services as well as amenities when taken together with being well designed they can positively contribute to the cityscape. Through to the fact that Clanbrassil Street Upper forms part of an important radial route into Dublin's city centre which is located c1.5km to the north of it.

Notwithstanding, on the other hand it recognises that such buildings can also have a significant detrimental impact on local character in a variety of ways including but not limited to impacting negatively on existing residential amenities through to placing undue pressures on social and physical infrastructure.

The City Development Plan therefore requires that taller buildings be directed to locations that can absorb them without significant adverse impacts as well as it seeks to protect areas of sensitive urban character particularly the city's heritage assets.

The City Development Plan sets out that: "*generally, larger sites (2ha and over) offer the greatest potential for such buildings, as these sites are more able to set their own context than smaller sites*" as well as sites considered in the Height Strategy the onus being on the applicant to demonstrate in their application documentation that the site is appropriate for a taller building.

The site itself is not identified for a taller building and does not occupy a key or corner position in Clanbrassil Street Upper, a streetscape scene where the prevailing character of its predominantly period in appearance buildings is two storeys on its eastern side. Particularly in the case of adjoining and neighbouring properties to the immediate north and south of the site, with this including No. 39 Clanbrassil Street Upper which formed part of the development site to which appeal case ABP-309667-21 relates.

The City Development Plan requires as part of an application for a taller building that the applicants undertake a thorough context and urban design analysis as well as a

Cityscape Assessment including for example photomontages (Note: Section 15.2.3, Table 15-1 and the City Development Plan Height Strategy).

Therefore, it must be demonstrated by the applicant that the taller building height now proposed would not have an adverse impact on its setting and that as part of the proposal itself they must demonstrate that all the performance-based assessment criteria for taller buildings set out in the City Development Plan can be met.

Of concern, the documentation included with the planning application and with the appeal submission does not include this demonstration. Even as a precaution given the planning history of the site which includes refusal of permission for a mixed-use building by the Board under ABP-306031-19. This previous planning appeal case included No. 39 Clanbrassil Street Upper and as such I acknowledge it related to a larger site. Notwithstanding this fact given that No. 39 Clanbrassil Street Upper and the sites of No.s 40 to 42A Clanbrassil Street Upper were separated by a laneway serving Orrs Terrace it is of note that the mixed-use scheme maintained this separation. With the taller building positioned on the site to which this appeal case relates and being a building that had a maximum height of 11.695m addressing Garden Terrace and No. 43 Clanbrassil Street Upper and rising centrally to four storeys and then five/six storeys built form on its southern end. At this point the southern elevation had a given maximum as well as coherent height of 20.33m addressing the laneway separating this site from No. 39 Clanbrassil Street Upper and Orrs Terrace on which a two-storey mixed use scheme that included the retention of the original period building envelope of No. 39 Clanbrassil Street Upper.

It is of further note that Block 2 as permitted by the Board under ABP-309667-20 was during its course of being determined by the Planning Authority subject to a request of further information.

This modified proposal subject to this appeal seeks to maintain the u-shaped built form of the subject building as permitted by the Board under ABP-309667-21. The accompanying drawings show that the staggered asymmetrical building shape would rise from its three-storey height at its northern boundary (Note: 11.995m) which bounds the lane serving Garden Terrace towards the eastern end of the building. From this point it would graduate in height upwards in an angular manner to a four-storey height of 15.14m. With this four-storey element at its nearest point being within

c3.5m of the northern boundary and within c8m of the northern boundary it would rise to five storeys in height (Note: Parapet height of 16.685m and maximum height of 17.3m when lift core/stair overrun etc element is included). This height is consistent along the southern elevation to where it meets the easternmost end of the building where this height is also maintained addressing the rear of the two-storey terrace period Longwood Avenue residential properties and the service lane running alongside their rear boundary of the site.

I also note that the modified building form effectively occupies almost the entirety of the site in the eastern end of the site.

With this elevation having a 17.4m length with 1.6m of its southernmost end having a modest setback westward of its five-storey element. Along the eastern boundary therefore the three-storey element has a depth of c3.5m; the four storey has a depth of c3.9m and five storey has a depth when the setback is included of 9.9m.

In relation to Garden Terrace and No. 39 Clanbrassil Street Upper the average setback of the building from the semi-private domain is c5.6m. With as said the easternmost end not being setback from its northern boundary which runs alongside the eastern most end of the cul-de-sac lane which serves these properties as well as the end property of Garden Terrace which shares a boundary with the easternmost end of the northern boundary of the site. In addition, new solid boundaries are included in the design to enclose the courtyards proposed at grade serving the subject building.

Having regards to the local planning policy provisions I am cognisant that Table 4 of Section 5 of Appendix 3 sets out the performance criteria for assessing taller buildings. With its first specified objective for assessing proposals for such buildings, requiring buildings that abuts a lower density area, to be planned to provide lower level buildings at the perimeter assisting the transition in scale from the taller building to the surrounding context.

In relation to the latter requirement, it is a concern that the increased height of Block 2 and its relationship with the properties to the north and west is not adequately contextually clarified in the drawings submitted with this application nor with the appeal. This is notwithstanding the more modest nature of this historic single storey terrace of artisan cottages built forms that sit behind the period building of No. 39 Clanbrassil Street Upper in a subservient manner. There is also a harmony in their

subservience to No. 39 Clanbrassil Street Upper and the predominant two storey nature of buildings to the north, north-east and east of them. With the streetscape scene to the north including No.s 50 to 55 Clanbrassil Street Upper, a terrace group of two-storey period buildings that are included in the City Development Plan's RPS as Protected Structures and also cut limestone walls with granite copings sections of walls dating to the 1790s that line the approach to Robert Emmet Bridge which lies to the west.

I note that this later man-made historic feature continues along the roadside frontage of the site in a southerly direction and similar built features are present on the opposite side of the Clanbrassil Street Upper. They are afforded protection under the Development Plan as well as are listed in the NIAH as being of regional importance and with their categories of special interest listed as Architectural, Historical, Social and Technical (Note: NIAH Reg. No. 50080982). The additional height of the proposed building would be overtly dominant in the context of this surviving built feature which adds to the sense of place and character of Clanbrassil Street Upper.

In my view the modified five storey building would also be out of character with the two-storey character of the terrace of period two storey properties of Longwood Avenue to the west and their more diminutive in scale rear additions and outbuildings. With the latter buildings adjoining the service lane between these Longwood Avenue properties and the eastern elevation of Block 2 characterised by their single storey built forms.

The proposed additional height, mass, scale, and volume proposed for Block 2 under this application would also, in my view, lack appropriate graduation with the two-storey height of No. 39 Clanbrassil Street Upper as retained which I note has a maximum gable fronted height of 8.09m addressing Clanbrassil Street Upper (Note: No. 39 Clanbrassil Street Upper). Alongside its contemporary residential addition to the rear which as permitted under ABP-309667-21 would accommodate a long rectangular built addition that would have a more subservient 6.4m maximum height. With this building being separated from Block 2, which is subject of this current application, by a modest in width lane (Note: Orrs Terrace) that at its most restricted is c3.7m and at its widest is c4.1m.

As such the proposed modifications would effectively result in aforementioned lane being contained on its northern side by an elevation with a c16.685m height along most of its length. This additional height given the limited width of this lane and the more diminutive two-storey height of existing and permitted buildings on the southern side would in my view create a more dominant sense of enclosure and create a less attractive realm for future pedestrian movements arising from the proposed development of No.s 39 to 42 Clanbrassil Street Upper.

Further, the proposed modifications of the subject building, due to the lateral separation distance between it and the more recent three storey in height building mixed use building addition that fronts the corner of Clanbrassil Street Upper and Windsor Terrace, would be at odds with the prevailing two storey character of buildings that occupy the eastern side of Clanbrassil Street Upper's streetscape in between. With this neighbouring building forming part of a Red Hatched Conservation Area which extends along the corridor of the Grand Canal and Robert Emmet Bridge.

Moreover, it is also of note in my view that the period buildings in the vicinity of the site in a consistent manner have a symmetry in their principal facades expressions as appreciated from the public domain.

For example, period buildings like No. 39 Clanbrassil Street Upper, tallest points are centrally positioned relative to their primary public domain.

Such symmetry is replicated in many of the period buildings as well as later buildings within the Clanbrassil Street Upper streetscape as well as in its wider setting.

Whereas in comparison the five-storey element proposed for Block 2 is asymmetrically located on its southern side. This in my view adds to visual apparentness and incongruity of the fifth-floor level when viewed as part of its streetscape scene and its visual setting.

In terms of recent permitted development in the vicinity of the site it is also of note that the Planning Authority permitted retention permission for No. 43 Clanbrassil Street Upper for the change of use of its parking area to outdoor café terrace. The additional building height, scale, mass, and volume could be considered as visually overbearing in the context of this now permitted use which has extended commercial activities at grade despite the separation distance maintained between the northern elevation of the building to this outdoor café terrace which at its nearest point is c5.6m.

Whilst the Building Heights Guidelines set out that increased height will be acceptable even where established heights in the area are lower in comparison; notwithstanding, having regard to the concerns raised above I am not satisfied that the proposed development is consistent with Section 3.2 and SPPR 3(a) of these section 28 Guidelines on the basis that the applicant has not demonstrated to the satisfaction of the Board that the proposed development satisfies criteria at the scale of the street and at the scale of site in which it would be sited.

In conclusion I concur with the Planning Authority's considerations that the proposed development by reason of its design, scale, mass, and bulk, together with the additional height, would give rise to visual overbearance of its setting and that this would adversely impact the residential and visual amenities of the area in a manner that would be contrary to the proper planning and sustainable development.

#### **7.2.14. Overshadowing**

Despite the proposed modifications which as set out above includes an additional floor level increasing in height a permitted 13.23m mixed use four storey block to 16.6m at its highest point with this building also having a length of 49.54m on its southern elevation, a staggered in width building envelope which at its eastern most end effectively extends the width of the site correlating with the southern, eastern and northern boundaries with a width of between circa 17.4m to 18.7m. Alongside the limited lateral separation distance between the building as amended with adjoining as well as neighbouring properties to the north, northeast and east, the documentation accompanying this application and the First Party's appeal submission to the Board does not include an evidence based and robust examination of daylight, sunlight, or overshadowing impacts. The absence of such an examination is in my view a substantive concern.

In this regard I note that Section 15.2.3 of the City Development Plan requires such applications to be accompanied by such assessment.

In addition, Table 4 of Section 5, Appendix 3, of the City Development Plan which effectively deals with applications for taller buildings under its fourth objective indicates that these shall be accompanied by detailed technical analysis and supporting reports to demonstrate how potential environmental impacts can be appropriately mitigated and avoided. With this clearly including that such application must prove that the

proposed development will not affect the surroundings adversely by way of overshadowing.

It further indicates that this should be done through the testing of accurate physical and three-dimensional models, sun path studies, as well as other suitable impact simulation methods and that impacts on adjacent properties should be tested through detailed section analysis as well as three-dimensional computer models.

I consider the local planning policy provisions are consistent with national planning policy provisions and guidance on such matters with for example the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2022, stating that: *“planning authorities should avail of appropriate expert advice where necessary and have regard to quantitative performance approaches to daylight provision outlined in guides like A New European Standard for Daylighting in Buildings IS EN17037:2018, UK National Annex BS EN17037:2019 and the associated BRE Guide 209 2022 Edition (June 2022), or any relevant future standards or guidance specific to the Irish context, when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.”*

I note that for daylight to existing buildings, the 2022 BRE Guidelines recommends the calculation of the Vertical Sky Component (VSC), which is the ratio of direct sky illuminance falling on the outside window to the simultaneous horizontal illuminance under an unobstructed sky. Annual Probable Sunlight Hours (APSH) and Winter Probable Sunlight Hours (WPSH) are also used to assess the quantity of sunlight for a given location. For sunlight to gardens and open spaces, at least half the space should receive at least two hours sunlight on the 21st of March.

As such the proposed development does not demonstrate that it meets local through to national planning minimum standards in terms of daylight, sunlight, and overshadowing. Nor does it provide evidence based in line with accepted best practice documentation upon which these matters can be assessed with any confidence and assurance in order to reach an informed determination on the level of impact on existing residential amenities in its vicinity that would arise throughout the year if it were to be permitted as proposed.

I also note to the Board that the planning history of the site which includes a previous proposal for a mixed-use development on the site with a six-storey height (Note: ABP-

306031-19) which was refused permission on appeal to the Board. The first two reasons raised concerns that at such a height that the proposed development would give rise to serious injury of residential amenities for properties in its vicinity by way of diminishment of daylight, sunlight, and overshadowing. These I have set out in Section 4.1 of this report above.

In relation to the planning history documentation pertaining to this previously refused development I note that the building proposed for the subject site which was also referred to as 'Block 2' had a staggered height of 11.45m at its northern side with the building in a staggered and angular manner increasing in height in a southerly direction raising to 13.685m to 16.6m and then to its highest point of 20.3m at its southernmost point. I also note that this building occupied the subject site to which this application relates.

It is my considered opinion given the subject buildings overall built form, as proposed to be modified under this application; its relationship with other sensitive to change properties in its vicinity including their open space amenity provisions; the setback/lateral separation distances between it and neighbouring buildings; the orientation of the building as well as the orientation of the neighbouring buildings; that existing context in comparison with the changed context that would arise if permission were granted, that the additional height, mass, volume and overall built form of Block 2 would likely give rise to significant greater shadows cast over residential properties in its immediate vicinity. In turn it would also diminish the residential amenities of these properties by way of additional loss sunlight/daylight on the facades addressing this building as well as their open space amenity. Of particular concern in terms of adverse impact are the existing residential properties to the north, northeast and east of the site.

Further Objective 3 of the Table 4 of Section 5, Appendix 3, of the City Development Plan which deals with the matter of public domain also requires that the design of tall buildings appropriately define and enhance the public realm including providing a safe and comfortable pedestrian experience.

It is therefore of a concern that pedestrian access to Garden Terrace has also not been assessed in the documentation accompanying this application that this access

would not be further overshadowed by the additional height proposed to Block 2 over and above its permitted built form.

I am not satisfied based on the information provided with this application that the proposed development would not achieve a reasonable balance between protecting the existing residential amenities of properties in its vicinity in a manner consistent with the 'Z1' land use zoning of the site and its setting. For these reasons I consider that the proposed development would be contrary to the proper planning and sustainable development of the area.

#### **7.2.15. Overlooking**

The Third-Party Observer's and the Planning Authority raise concern that the proposed modifications would give rise to additional overlooking on residential properties in the immediate vicinity.

In this regard, the amended design would give rise to more actual overlooking given the additional opportunities for overlooking arising from the increased levels of opaque glazing through to the way the upper floor level open space amenities have been designed.

This is a particular concern in my view for properties to the north and east of Block 2 as modified under this proposal.

Whilst I consider that mitigation measures could be conditioned to improve this outcome notwithstanding, the design put forward with this application adds to the other residential amenity impacts of concern discussed above.

#### **7.2.16. Visual Amenity Impact**

In addition to the visual amenity impact issues already discussed above I note that the third objective of Table 4 Section 5 of Appendix 3 sets out that developments for taller buildings should contribute positively to its surroundings at street level through to help create a sense of place through to provide for a safe and comfortable pedestrian experience.

Given the concerns raised above I raise a concern the additional building height proposed and the additional negative amenity impacts that would arise from this change would give rise to a diminished and less qualitative adjoining public and semi-public realm. Of particular concern are the laneways serving Garden Terrace and Orrs

lane. I therefore consider that the proposed development would be contrary to this objective.

I also consider that there is merit that the proposed development given the prevailing character of the surrounding area, particularly in terms of the height that characterises built forms addressing Clanbrassil Street Upper as well as having regard to Protected Structures in the vicinity and the Red Hatched Conservation to the south of the site, that the proposed development if permitted could give rise to an undesirable precedent where taller buildings are inserted in an *ad hoc* and piecemeal manner. Given the lack of transition in building height between the proposed building as modified and the heights of adjoining and neighbouring buildings such a precedent could give rise to a streetscape scene where the coherence, harmony and graduation of building heights is lost.

#### 7.2.17. Conclusion

Taking the above matters into consideration I consider that the proposed development would result in a material additional visual and residential amenity diminishment of its setting by way of overbearance, visual incongruity, overshadowing and overlooking in a manner that would be contrary to the proper planning and sustainable development of the area.

### 7.3. Other Matters Arising

- 7.3.1. **Unauthorised Development:** As a precaution I raise it as a concern that the height of the building, its mass though to its scale as presented on the day of site inspection would have the appearance that the development as sought under this application is being implemented as opposed to the permission as granted under ABP-309667-21 in relation to No.s 40, 41, 42 and 42A Clanbrassil Street Upper element. I therefore raise a concern that the development description does not accurately reflect the development that is sought under this application and that should the Board be minded to grant permission it should first seek revised notices that more accurately reflect the nature of the development being sought.
- 7.3.2. **Standards for Future Occupants:** Having regard to local through to national planning policy provision, in particular but not limited to those set out under Section 15.9 of the City Development and the Sustainable Urban Housing: Design Standards for New Apartments I raise no substantive concern that the modified building block which

effectively seeks three additional apartment units including the positive addition of one three bedroom apartment unit, a type of unit that was not present in the scheme as granted by the Board under ABP-309667-21, in terms of general compliance with these requirements.

7.3.3. **Cycle Parking:** The documentation with this application fails to demonstrate that the required bicycle space provision for the additional quantum of development sought. It also appears to show a reduction of the 54 bicycle spaces indicated in the plans accompanying ABP-309667-21(P.A. Ref. No. 3619/21). In this regard I note that Section 15.13.1.4 and Appendix 5 of the City Development Plan a minimum of one cycle parking space per resident should be provided within the development as well as additional visitor parking at surface level at a rate of 1 per 10 no. residents. I concur with the Planning Authority's Transportation Planning Division that this requires clarification and in tandem that it is further demonstrated that such a provision can be provided alongside providing the required additional quantum of waste storage facilities for the increased number of apartment units sought.

7.3.4. **Mobility Management:** Chapter 15, Table 15-1 of the City Development Plan sets out thresholds for planning applications with this including the requirement of providing a mobility management strategy for apartment schemes over 20 units. It is a concern in my view that the additional quantum of apartment units proposed for a mixed scheme, albeit being a modest increase of three units, relates to a development that was permitted with zero car parking provision, no car share provision, no loading and unloading provisions through to what now appears to be an inadequate provision of bicycle parking spaces. I also observed that there is heavy demand on the limited public car parking spaces within easy reach of the site. In addition to this I note that Section 15.4.4 of the City Development Plan which deals with the matter of inclusivity and accessibility sets out that development proposals must be designed to meet the mobility needs and convenience of all, as well as incorporate inclusive design principles particularly for vulnerable groups such as the elderly and persons with disabilities. The proposed modifications as submitted do not demonstrate that the subject building as revised would align with these requirements. I am not therefore satisfied that the proposed modifications when taken with the cumulative development granted under ABP-309667-21 as well as other developments permitted in this area would not place undue additional burdens on the limited car parking provision that is

available in the surrounding public realm. With I note retention permission granted for an outdoor café/terrace at No. 43 Clanbrassil Street Upper since this application was made. There also appears to be a limited supply of private car parking spaces in this locality through to the site itself is a heavily trafficked radial route serving Dublin City Centre and as part of this function it is an important bus route with a bus stop to the immediate north of the site as well as the adjoining public carriageway containing cycle lanes on both sides. As such overspill of car parking through to situations of loading and unloading associated with the occupation of this building could impact the safe and efficient operation of the surrounding public road network.

7.3.5. **Consultation:** Third Party Observers raise concerns in relation to the repeated applications lodged in relation to this site in recent years and that this has caused them undue stress as well as additional financial burdens. They also raise it as a frustration that the First Party failed to engage with them in relation to the proposed changes to the building permitted at No.s 40 to 42A Clanbrassil Street Upper. Whilst I acknowledge these concerns there is no procedural or other mechanism in place that puts a requirement on an applicant to consult with property owners in the vicinity nor are the other concerns raised in relation to this considered to be a planning matter that would warrant consideration as part of the determination of this planning application.

7.3.6. **Right of Way:** Matters relating to such access/right of way issues are a civil matter outside the remit of this planning appeal. I can only undertake my assessment based on the information before me. I am satisfied, based on this information, that the applicant has demonstrated sufficient legal interest to make this application and the proposed development itself does not appear to be dependent upon Third Party lands to be carried out. As in all such cases, the caveat provided for in Section 34(13) of the Planning and Development Act 2000, as amended, applies which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development. I also note the provisions of Section 5.13 of the Guidelines for Planning Authorities, Development Management, 2007, in this regard. I recommend that if the Board is disposed towards a grant of permission, that a note be attached to any such grant advising the applicant of the provisions of section 34(13) of the Planning and Development Act 2000.

7.3.7. **Procedural:** Concerns are raised by the Third Party and First Party Appellant in relation to the Planning Authority's handling of this planning application. The Board

does not have an ombudsman role on such matters, and I consider that these concerns are outside the remit of this planning appeal.

- 7.3.8. **Adequacy of the Documentation:** Outside of the deficiency raised in my assessment above in relation to the documentation provided with this application I consider that there is satisfactory information upon which the Board can determine this case. However, should the Board be minded to grant permission I recommend that the assessment detailed as missing in my assessment above be first requested alongside the applicant should be requested to provide clarity that the bicycle parking and waste storage can be provided in accordance with Development Plan requirements.

## 8.0 **Appropriate Assessment**

- 8.1. Having regard to the nature and scale of the proposed development within a serviced urban area and the distance from 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 or projects, on a European site.

## 9.0 **Recommendation**

- 9.1. I recommend that permission be **refused**.

## 10.0 **Reasons and Considerations**

1. Having regard to the design, height, scale, mass, bulk, and relationship of the proposed mixed use building relative to adjoining and neighbouring residential properties, particularly to the north, northeast and east of the site, it is considered that the proposed development would be overbearing in relation to these residential properties and it would result in excessive additional overshadowing as well as overlooking of them over and above the permitted scheme ABP-309667-21 (P.A. Ref. No. 3619/20).

It is considered that the proposed development would also fail to integrate or be compatible with its streetscape scene and would have an adverse impact on the visual character of the area which is in part in formed by the coherence of its building height. The proposed development would, therefore, seriously injure the visual amenities of the area.

The proposed development would be contrary to the objectives of 'Z1' as set out in the Dublin City Development Plan, 2022-2028, which seeks "to protect, provide and improve residential amenities" and it would also be contrary to Table 4 of Appendix 3 of the Dublin City Development Plan, 2022-2028, which sets out the objectives for buildings taller than their prevailing context.

For these reasons the proposed development would 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.*

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Patricia-Marie Young  
Planning Inspector

23<sup>rd</sup> day of November, 2023

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>			
<b>Proposed Development Summary</b>	Modifications to an existing permitted mixed-use building which in summary seeks to increase the height of the building from four to five storeys as well as increase the apartment unit number from 24 to 27. The parent grant of permission is ABP-309667-21.		
<b>Development Address</b>	No.s 40, 41, 42 and 42A Clanbrassil Street Upper, D8.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> <small>(That is involving construction works, demolition, or interventions in the natural surroundings)</small>		<b>Yes</b>	✓
		<b>No</b>	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>		Class 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001.	Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (If relevant)</b>
			<b>Conclusion</b>
<b>No</b>		N/A	
<b>Yes</b>		10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended	Is significantly below the area and apartment unit number set
			Proceed to Q.4

			out in the threshold.	
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<b>4. Has Schedule 7A information been submitted?</b>		
<b>No</b>	√	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_