



An
Bord
Pleanála

Inspector's Report

ABP-314691-22

Development	Construction of 52 residential units & 1 retail unit, together with all associated site works.
Location	Corner of Brunswick Street North and Church Street Upper, Dublin 7.
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3361/22
Applicant(s)	Durkan Residential Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	1 st & 3 rd Party
Appellant(s)	Durkan Residential Ltd. Declan Murphy & Partners
Observer(s)	None.
Date of Site Inspection	7 th March 2023.
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The level site, with a stated area of 0.1067 ha, is located at the junction of Brunswick Street North and Church Street Upper in Dublin 7. It is currently vacant. It contains the walls of some older buildings, together with some newer concrete walls and fencing on the boundaries. A small area at the junction has been developed as a pocket park in the recent past – now somewhat unkempt. Scrub vegetation has been recently cleared from most of the site. There is builder's rubble deposited in the southwestern corner and some rubbish scattered over this part of the site also.
- 1.2. To the southeast, the site abuts 117 Church Street Upper – a three-storey terraced building with steel bracing; necessitated by demolition in the past, of an adjoining building on the appeal site. There is a single-storey, flat-roofed extension to the rear of this building. It, and its neighbour 118, are currently in use as a bookmakers' premises at ground floor level; with residential at upper floor levels. There is a public house ("Bonobo") at ground level within three-storey 119-121 Church Street Upper, with residential use at upper floor levels. This property extends to the rear of 117 & 118; with a beer garden area abutting the southeastern boundary of the appeal site. The boundary with this beer garden is a 3.0-5.5 m high wall – a mixture of brick, stone and concrete blocks. There are plants trailing up this wall on the beer garden side. The courtyard beer garden is landscaped with planters. To the south, the site abuts two properties. The first is an open basement area of poured concrete walls – the boundary with which is a 1.3 m high concrete wall. It is not clear what this structure was intended for, nor is it clear what property it is connected to. To the west of this open basement, is a communal open space area to the rear of King's Court Apartments on King Street North – the boundary with which is currently a steel-mesh fence – 3.5 m high. I note that this fence is not constructed on the red line boundary of the appeal site – and the actual red-line boundary is located some little way north of it. It is not clear who owns or controls the intervening space; 2.0-2.5 m wide. To the west, the site abuts a school site, on which there is a three-storey building – set back from Brunswick Street North – the boundary with which is a 3.0 m high old stone and brick wall. To the northwest, the site abuts a two-storey, brown-brick Protected Structure – 98 Brunswick Street North; there is a small two-

storey return at the rear of the house. This house would appear to be in residential use – but the front door was padlocked on the outside, on the date of site inspection.

- 1.3. There are two large metal gates on Brunswick Street North, giving vehicular access to the western part of the site. There is a further set of vehicular entrance gates within a ruinous building. There is a third set of vehicular entrance gates closer to the junction, giving access to the eastern part of the site. Remaining road frontage boundaries are a mixture of old walls, concrete block walls and metal fencing (around the pocket park area).
- 1.4. On the opposite side of Brunswick Street North, working westward from the junction with Church Street Upper, there is a four-storey apartment building 'The Hardwicke' – slightly set back from the edge of the pavement. There is a three-storey smaller element linking it to a three-storey, older brick house (103 Brunswick Street North) – opening directly onto the pavement. Next again is a two-storey-over-raised-basement stone and brick building (which appears as an annexe to no. 3) – built on the pavement boundary. This annexe is in residential use and does not have a doorway onto the street; but there is a pedestrian gateway adjoining it. Next again is a single-storey, flat-roofed, electricity sub-station building. Next again is a garden area – raised above street level by approximately 2.0 m. This garden area would appear to belong to adjoining Carmichael House (a Protected Structure) in community use. There is a five-storey, older City Council apartment block, "Kevin Barry House", on the opposite side of Church Street Upper.
- 1.5. Brunswick Street North is a one-way street of two lanes – in a west to east direction. Church Street Upper is a two-way street of five lanes – two lanes northbound and three lanes southbound (inclusive of a bus lane). There is a bicycle lane on the site side of Church Street Upper. The junction of the streets is signal-controlled. There are footpaths on both street frontages. The footpath on Brunswick Street North is less than 2.0 m; and at one point, narrows to 1.35 m. There are double yellow lines along both street frontages.
- 1.6. A small area to the rear of 98 Brunswick Street North (outlined in blue, as being in the control of the applicant) is to become part of the rear garden/courtyard of the Protected Structure – to square it off.

2.0 Proposed Development

2.1. Permission sought 23rd February 2022, for development of 4,079 sq.m, as follows-

- 52 apartments within three blocks (Block A = 28 units; Block B = 17 units; Block C = 7 units) – ranging in height from 3-8 stories. 26 two-bedroom units and 26 one-bedroom units.
- Retail unit (106 sq.m) on ground floor of block A.
- 3 pedestrian access points to residential units, from Brunswick Street North.
- Electricity sub-station opening onto Church Street Upper.
- 108 bicycle parking spaces at ground level in two separate areas.
- Bin storage area at ground level within block B.
- Connection to public sewers and mains water.
- 198 sq.m of communal open space (including 54 sq.m roof terrace).

2.1.1. The application is accompanied by the following documentation of note-

- Letter to DCC in relation to Passive House standards.
- Planning Application Report – February 2022.
- Civil Engineering Infrastructure for Planning report – 18th February 2022.
- Assessment of the Visual Impact on the Built Environment – February 2022.
- Architectural Heritage Impact Assessment – February 2022.
- Transport Statement – including Residential Travel Plan – February 2022.
- Ecological Impact Assessment Report – 18th February 2022.
- Appropriate Assessment Screening Report – 18th February 2022.
- Construction & Demolition Resource Waste Management Plan – 18th February 2022.
- Outline Construction Environmental Management Plan – 18th February 2022.
- Daylight & Sunlight Assessment Report – February 2022.
- Photomontage Report – February 2022.

- Landscape Visualisation Report – December 2021.
- Design Statement – Planning – 16th February 2022.

2.2. Following a request for additional information, revised proposals were received on 5th August 2022, as follows-

- Reduction in height of blocks A & B by one storey; and corresponding reduction in number of apartments to 45. Block A = 24 units; Block B = 14 units; Block C = 7 units. 23 one-bedroom units and 22 two-bedroom units.
- Slight adjustment of footprint of block B, to ensure a 2.0 m wide footpath on Brunswick Street North.
- Reduction in floor area of retail unit to 105 sq.m.
- Reduction in number of bicycle parking spaces to 93 (including for cargo bicycles).
- Screening of roof terraces to ensure no overlooking of adjoining property.
- The scheme is designed as a turnkey social housing scheme.

2.2.1. The additional information submission is accompanied by the following documentation of note-

- Bat Survey Report – June 2022.
- Noise Impact Assessment Report – 14th July 2022.
- Archaeological Assessment – August 2022.
- Photomontage Report – July 2022.
- Daylight and Sunlight Assessment Report – July 2022.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 1st September 2022, Dublin City Council issued a Notification of decision to grant planning permission, subject to 24 conditions – the principal of which are summarised as follows-

1. Development to be carried out in accordance with plans and particulars received with the application, as amended by further plans and particulars received on 5th August 2022.
2. Required payment of Development Contribution of €255,049.73.
3. Required payment of Supplementary Development Contribution of €86,031.80 towards LUAS Cross City Scheme.
4. Required payment of a Development Contribution of €164,000 *in lieu* of public open space provision (for 41 apartments).
- 6.a Fifth-floor level of block A shall be omitted; and proposed sixth floor plan relocated to fifth floor level – resulting in omission of 4 apartments.
- 6.b A brick band matching the brick finish of block A shall be provided between the ground and first floor levels of the block, which shall be the fascia level of the permitted retail unit.
11. Related to archaeology.
12. Related to bat and flora survey to be carried out at appropriate times of year.
15. Required submission of a Construction Management Plan.
19. Related to construction & demolition waste.
20. Related to hours of construction.
23. Required compliance with Part V of the Act.
24. Required compliance with the requirements of Transport Infrastructure Ireland in relation to works on, near or adjacent to the Luas light rail system.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Report of 19th April 2022 summarises all the submissions, and recommends additional information.

Report of 1st September 2022, summarises all the additional information submissions and recommends granting permission subject to conditions – principal amongst which was the requirement to omit an upper floor of block A – condition 6.a.

3.2.2. Other Technical Reports

Engineering Department – Drainage Division – report of 10th March 2022. No objection. Surface water discharge must be attenuated to 2 litres/second.

Environmental Health Office – report of 9th March 2022. Further information requested in relation to noise. Development to comply with the 'Construction & Demolition Good Practice Guidelines' issued by the EHO.

Housing & Community Services – report of 27th January 2022. Relates to engagement by the applicant in relation to compliance with Part V.

Transportation Planning Division – report of 7th April 2022. Recommends adherence to TII's 'Code of Engineering Practice' regarding works near Luas line. Additional information is requested to provide for a minimum 2 m wide footpath along Brunswick Street North. Because of proximity of Luas and bus services, and easy walking distance to all services, zero parking provision is acceptable. Clarity is needed in relation to design of bicycle parking spaces – with conflicting figures quoted in the application. It is unclear if refuse store is of sufficient capacity for residential and retail uses.

Archaeology Section – report of 12th April 2022. There have been archaeological finds in the surrounding area. Foundations of a terrace of houses from the 18th Century may remain on this site. Height of blocks A & B, in particular, would dominate the terrace of two- and three-storey buildings on Church Street Upper and will visually interrupt the grain and scale of the historic streetscape. There was no consultation with the City Archaeologist prior to lodging the application. Additional information recommended – to include an archaeological assessment and impact assessment on the historic streetscape.

Transportation Planning Division – report of 22nd August 2022. Permission is recommended subject to conditions.

Archaeology Section – report of 26th August 2022. Submitted Archaeological Assessment is acceptable. Concern remains in relation to the reduced-height blocks A & B. Permission recommended subject to conditions relating to archaeology.

3.3. Prescribed Bodies

An Taisce – letter dated 28th March 2022. Development may impact on adjacent Protected Structure at 98 Brunswick Street North. This building is a quintessential, mid-19th century, two-storey, double-fronted, brick-faced house which is in a good state of preservation. The proposed apartment blocks would appear overbearing next to this two-storey structure. Measures should be incorporated to mitigate the impact of the development on this Protected Structure. Property on the opposite side of Brunswick Street North will be overshadowed. Because of latitude of Dublin, light cannot penetrate down into and between large buildings on urban streets.

Transport Infrastructure Ireland – letter dated 16th March 2022. Site is within area adopted for Section 49 Supplementary Development Contribution Scheme – Luas Cross City. Site works should comply with TII’s Code of Engineering Practice for Works on, near of adjacent to the Luas Light Rail System’.

Development Applications Unit – Dept. of Housing, Local Government & Heritage – letter dated 29th March 2022. Development has potential to disturb the roosting habitat of bat species listed under Annex IV of the EU Habitats Directive; and also to spread invasive species, through clearance of ivy-clad wall and works on the site. The habitat and bat surveys, were undertaken outside of best-practice times of year. There are many older buildings in the area – with the possibility of outlier bat roosts. Japanese Knotweed has been recorded just over 1km from this site. Conditions are recommended to be attached to any grant of permission in relation to these two issues.

3.4. Third Party Observations

There are observations from Frank McDonald of Temple Lane, Dublin 2; and “Bonobo” Public House of 119-121 Church Street Upper; the issues raised are similar to those raised in the 3rd party appeal.

4.0 Planning History

Ref. 2295/97: Refers to permission for development of 20 apartments on site of 114 & 115 Church Street Upper. This is part, or all, of the current appeal site. Permission was never implemented.

Ref. 4588/19: Refers to refusal of permission at 119-121 Church Street Upper (“Bonobo”); to retain beer garden, use of metal-clad structure within the beer garden for kitchen and for two canopies. On appeal to the Board (**ABP-306752-20**), retention permission was granted on 4th August 2020. The permission did not contain any restrictive conditions other than those relating to noise and music.

Ref. 3237/23: On 20th February 2023, St. Paul’s School sought permission, to erect a three-storey extension to the east of an existing three-storey school building (immediately adjacent to 98 Brunswick Street North and the appeal site). The development will comprise ground level parking/service area, first floor accommodation and second floor roof play area. The height of the metal sport fencing surrounding the roof play area will be height of the eaves of the adjoining three-storey school building. There are three first floor windows addressing the appeal site – offset by about 1.25m from the boundary. One window lights a storage room, whilst the other two light a Practical Activity Room. This latter room has two further windows on the opposite (western elevation) side of the new block. The extension is set back from the street – conforming to the building line of the existing three-storey school building. The existing stone/brick boundary wall, separating the school site from the current appeal site, is to be retained. This is a recent application – with no decision to date.

5.0 Policy Context

5.1. Development Plan & Other Guidance

5.1.1. Development Plan

The relevant document is the Dublin City Development Plan 2022-2028.

- The site is zoned ‘Z5’ City Centre - To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and

protect its civic design character and dignity. Residential and shop uses are 'Permissible'. The indicative Plot Ratio for this zoning is 2.5-3.0; and Site Coverage is set at 90%.

- The site is within Zone 1 for parking – which indicates a maximum 0.5 parking space per dwelling, and 1 space per 350 sq.m gross floor area for retail use, as per Table 2 of Appendix 5. A relaxation of maximum car-parking standards will be considered in Zone 1 for any site located within a highly-accessible location.
- Table 1, Appendix 5, indicates a bicycle-parking standard of one space per bedroom within apartment complexes – to include spaces for cargo bicycles, e-bikes, trailers and adapted bicycles.
- The site is within the zone of archaeological potential for Recorded Monument DU018-020 (Historic City).
- 98 Brunswick Street North (immediately abutting the site to the northwest) is a Protected Structure – no. 998; 119-121 Church Street Upper ("Bonobo" public house) is a Protected Structure – no. 1544; Carmichael House (on the other side of Brunswick Street North) is a Protected Structure – no. 991.
- Church Street Upper is part of a Proposed Bus Connects Radial Core Bus Corridor (CBC).
- Table 15.4 indicates a requirement for 10% public open space on 'Z5' lands.
- Section 15.9.2 deals with unit size and layout – taken from SPPR3 of the Apartment Guidelines, and states as follows-

One-bed unit – 2 bedspaces – 45sq.m minimum.

Two-bed unit – 4 bedspaces – 73sq.m minimum.

Three-bed unit – 5 bedspaces – 90sq.m minimum.

'The introduction of a 2 bedroom, 3 person unit may be considered within a scheme to satisfy specialist housing for Part V social housing requirement or to facilitate appropriate accommodation for older people and care assistance. These units will be restricted to a maximum of 10% of the overall unit mix.

The 2 bedroom, 3 person unit will only be considered as part of specialist

housing provision as specified above and will not be considered as standard residential accommodation’.

- Section 15.9.8 states- ‘On refurbishment or infill sites of up to 0.25 ha, the communal amenity requirements may be relaxed on a case by case basis’. Section 15.9.9 states- ‘Roof terraces may be provided in certain circumstances subject to an assessment of accessibility, safety and micro-climatic impacts. Roof terraces will not be permitted as the primary form of communal amenity space but may contribute to a combination of courtyard and or linear green space. The provision of roof terraces does not circumvent the need to provide an adequate accessible ground floor residential amenity that achieves adequate sunlight and daylight levels throughout the day unless exceptional site specific conditions prevail’.

5.1.2. Sustainable Urban Housing: Design Standards for New Apartments

These 2022 Guidelines from the Department of Housing, Local Government & Heritage [hereafter in this Inspector’s Report referred to as the Apartment Guidelines] are quoted to in Chapter 15 of the Development Plan; and constitute Government policy. Individual sections of this document will be referenced in the assessment section of this Inspector’s Report.

5.2. **Natural Heritage Designations**

The application was accompanied by an Appropriate Assessment Screening Report. The site is not located within or adjacent to any Natura 2000 sites. Wastewater will be discharged to the public system; and surface water run-off will be attenuated on site, prior to discharge to the public sewer network. Natura 2000 sites within the zone of influence include South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA. The development was screened for appropriate assessment by DCC. No mitigation measures are proposed to avoid/reduce any impact on a Natura 2000 site.

The proposed development is located within an established urban area on zoned lands that are suitably-serviced. It is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with

other plans or projects, would not be likely to have a significant effect on any Natura 2000 sites. A Stage 2 Appropriate Assessment is, therefore, not required.

5.3. EIA Screening

The development was screened for EIA by DCC. Having regard to the nature of the proposed development, comprising the construction of three apartment blocks for 52 units and a retail unit, including all necessary site works, in an established urban area, where infrastructural services are available, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination; and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. 1st Party Appeal Against Condition

The appeal from Brock McClure, agent on behalf of the applicant, received by the Board on 28th September 2022, can be summarised in bullet point format as follows-

- The Board is requested to omit condition 6 of the Notification of decision to grant permission.
- The development is in accordance with Government policy to increase building heights and housing density close to good public transport networks.
- The high-quality design is sensitive to its surroundings – the scheme has been divided up into a number of blocks, in order to avoid a monolithic appearance.
- Daylight and sunlight levels are acceptable within the scheme itself. Whilst there will be some overshadowing of buildings on the opposite side of Brunswick Street Upper, this impact should be balanced against the strong policy mandate to deliver higher-density housing on appropriate sites, such as this one, within the city core. There is, therefore, no requirement for compensatory design solutions beyond breakdown in the massing of the

building, generous balconies and substantial glazing to allow for light penetration.

- Block A was reduced in height by way of additional information submission – to 23.4m. No credible basis for the omission of a floor has been put forward by the planning officer. The planning authority has not had due regard to the urgent requirement for social housing units within this area.
- Given the tight urban grain, seven storeys are appropriate on this site. The site has been vacant for some time, and the proposed development will significantly improve the visual amenity of the area.
- The character of Church Street was much altered in the 1990's and early 2000's with construction of large office and residential buildings.

6.1.2. 3rd Party Appeal Against Decision

The appeal from BPS Planning & Development Consultants, agent on behalf of Declan Murphy & Partners, received by the Board on 26th September 2022, can be summarised in bullet point format as follows-

- The appellant company is the owner of “Bonobo” public house, 119-121 Church Street Upper. It has not agreed to any part of this development.
- The scheme would have a significant detrimental impact on the beer garden of the public house, which abuts the development site to the west, north and northeast. Blocks are at either no setback or 3.0-4.3 m setback. The blocks would be visually overbearing, dominant and obtrusive. The blocks would remove all the existing amenity enjoyed by patrons using the beer garden.
- The communal open space area within the scheme is very poor – no more than a tunnel for pedestrians within the scheme. It offers no quality, usable open space.
- The plot ratio, at 3.8, is higher than the 3.0 allowed.
- All drawings, model images and photomontages, confirm overdevelopment. The scheme seems to have been designed almost as if the site was a greenfield one. The massive blank gable elevation of block C, right on the boundary with the beer garden, is poor. The beer garden has been treated

almost as if it was within the site boundary – *de facto* open space for the scheme.

- The degree of overlooking and overshadowing would damage the business of the appellant. The proximity of apartments would result in complaints from residents and patrons alike.
- The appellant was not given the opportunity to respond to the additional information submission to DCC, as the changes were not deemed significant.
- The future development potential of the beer garden and public house property would be compromised by the proposed development.
- Residential properties to northwest, north and northeast would be profoundly overshadowed during the winter, when sunshine is needed most. Residential properties to the west would be overshadowed in the mornings.
- There is no public open space provided with the scheme.
- Units can only be occupied by single people or very small households. The unit mix is inappropriate.
- DCC did not specify any boundary treatment with the appellant's site.
- No detailed Construction Management Plan has been submitted – to show how the appellant's property would be protected during the construction phase. A more reasonable scheme would provide for setbacks from the boundary, so that mitigation measures could be put in place. The noise levels during construction will significantly impact on the beer garden.
- The Board should refuse permission or make further amendments – including reducing blocks A & B to a maximum of five storeys and requiring an improved relationship between the beer garden and the development.
- It is noted that significant concerns have been raised by other parties during consideration of the application by DCC.
- The change in scale on Church Street Upper is too abrupt.
- These blocks can only be permitted at the significant expense of surrounding properties.

- No attempt was made to screen the balconies in blocks A & B, from overlooking the beer garden. The Board is requested to address this issue, in the event that permission is granted.
- Block C is one storey too tall as it abuts the beer garden.
- The Board is requested to address the issue of poor unit mix – and to provide for some larger three-bedroom units within the development (one third of all units); as this will allow for the creation of a more sustainable community.
- The beer garden does not generate noise (out of respect for neighbours), as was confirmed by the applicant’s noise study.
- Planning permission was obtained for the beer garden in 2020. It has a 3.5 m high brick & stone wall on the boundary with the appeal site – with vegetation on the appeal site appearing over the wall. There is a metal-clad kitchen/serving structure within the rear garden space of the adjoining bookmakers’ premises at 118 & 117 Church Street Upper. There are residential units on the upper floors of the public house.
- The communal open space area would not be large enough to allow for trees to grow to heights shown on drawings submitted.
- The development will detract from the curtilage of a Protected Structure – “Bonobo” public house, and 98 Brunswick Street North.
- The Development Plan acknowledges that the vast majority of the city will not be suitable for mid-rise or taller buildings. Dublin is a low-rise city, and should remain so, predominantly.
- The main communal open space area for this scheme, to the rear of 98 Brunswick Street North, is the size of an average suburban garden – and would be inadequate for so many residents. Much of it is given over to bicycle parking. The beer garden is not large, but it makes the applicant’s claimed “courtyard” appear tiny.
- The layout assumes that the beer garden will never be developed. It may, in future, be developed for apartments. Both blocks B & C need to be set back further from the boundary with the beer garden – reducing the footprint of the

development. This would allow a larger central communal open space area to be developed. The development as proposed, would compromise the future development potential of the beer garden.

- Block C will have a blank gable wall, 13.2m high, abutting the beer garden. This wall is devoid of any interest. On March 21st, from 15.00 hours, this block would begin to overshadow the beer garden and then would cut off all sunshine. On 21st June, from 15.00 hours, overshadowing would begin, followed by total overshadowing, when the beer garden is most in use. It is not clear why only part of block C is three storeys. The entire block should be only three storeys, and set back from the common boundary with the beer garden. On 21st June, block A would block sunshine prior to 08.00 hours, which would not impact on the current business, but would impact on the future development potential of the beer garden.
- The sunlight and daylight assessment submitted by the applicant, ignores the beer garden; where the BRE Guidelines focus on windows of habitable rooms. The beer garden is busiest on sunny afternoons and evenings.
- The scheme fails to meet even the minimally-low standards set out in the BRE Guidelines for daylight and sunlight.
- Blocks A & B are the one building. There is no separation between them – like with block C. They comprise just one massive, over-scaled building.
- Block A inhibits early morning sunshine from the communal courtyard area. Lowering its height would result in less overshadowing.
- The proposed building is higher than any others in the area – even those at the junction of Church Street and King Street North.
- Floor-to-ceiling heights within the blocks should be reduced from 2.7m to 2.4m – in order to lower the overall height of blocks.
- Food and drink are served in the beer garden until 22.00 hours each evening.
- Studies submitted by the applicant do not refer to the beer garden as being part of the curtilage and setting of a Protected Structure. The applicant's Visual Impact Assessment is, therefore, incomplete.

- Within block B, apartments BB-02-02, BB-03-02, BB-04-02 & BB-05-02 are single-aspect towards the beer garden; and should be omitted. Other dual aspect apartments should have obscured glazing and screens fitted on their south side – to exclude overlooking of the beer garden. Apartment BA-06-04, on the seventh floor of block A, has bedroom windows overlooking the beer garden. The southwest corner of the communal roof terrace overlooks the beer garden – it should have been located somewhere else within the scheme. All south-facing balconies in block B should be omitted, and windows replaced with stepped-out windows which face east-west only.
- Just because a development complies with BRE Guidelines on daylight and sunlight, does not make it acceptable.
- The public house is located in a busy city centre location; and does generate some noise. There is planning permission for the beer garden use. Windows and balconies within the development may be affected by noise from the beer garden. The beer garden is an existing and established use. The proposed development needs to integrate with the prior beer garden use. Ongoing and continuous complaints can be anticipated from residents of the future scheme. The development is setting up a likely future conflict between residents and the owners of the beer garden.
- The value of the 3rd party appellant's property would be depreciated by this development.
- Patrons of the beer garden need to be protected from noise, dust, vibration; and to be sure that their safety is addressed. The construction phase should not put the beer garden out of action because of discomfort to patrons.
- Working hours should be 0800-1800 Monday to Friday and 0900-1400 on Saturdays. No special arrangements for deliveries should be allowed outside these hours. An independent complaints procedure is needed.
- The shared boundary wall should not be damaged during construction. It may be affected by vibration.
- No construction noise mitigation measures have been put forward. Acoustic barriers need to be provided.

6.2. Applicant Response to 3rd Party Appeal

The response of Brock McClure, of 24th October 2022, can be summarised as follows. It contains a list of planning applications in the area.

- The applicant has entered into an agreement with the City Council to build this development for a specific purpose. There is a strong need for social housing in this area.
- The purpose of Z5 zoning, is to retain life in the city. It is, therefore, suitable for intensive mixed-use development. The site is currently vacant, and needs to be developed for the sustainable life of the city. The site has capacity to absorb development and comply with necessary standards.
- The Development Plan seeks to achieve a more compact and sustainable urban form, through increased densities. The Core Strategy of the Development Plan is based on a density assumption of 100 units per ha.
- Maximum benefit needs to be gained from proximity of quality public transport and social infrastructure. This is in line with national and regional policy guidelines. This is a well-located, brownfield site.
- The 3rd party appellant's request for reductions in height are not evidence-based – simply a gut feeling that the scheme is too tall in parts. A suite of professional assessments was submitted with the application, to justify the development. The proposed height, at this central location, is justified.
- Block A, at a maximum height of 7 storeys, is entirely appropriate for this site and its immediate context.
- Section 4.12 of the Apartment Guidelines states- 'For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, communal open space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality'. The south-facing communal courtyard will be directly accessible from all cores. It will have access to bicycle parking and bin stores. It will be overlooked by units. The roof terrace will be accessed from core1: it faces east, south and west.

- The Plan allows for a relaxation in the 10% public open space requirement for inner urban infill sites. Public open space on this small site is not feasible. The site is proximate to a number of parks and playgrounds – the closest being King’s Inns Park and St. Michan’s Park. There are multiple gyms in the area, as well as the university campus at Grangegorman.
- The 3rd party overstates the impact on the beer garden. It is standard practice for mixed-use city centre developments to operate successfully side-by-side.
- A condition relating to noise monitoring during the construction phase will address the concerns of the beer garden owners. Condition 18 of the Notification of permission addressed the issue of noise; and the applicant is happy to comply with it.
- The applicant has undertaken detailed sunlight and daylight analysis; and has quantified the impacts on windows of nearby buildings. The 3rd party appellants’ use of a website for overshadowing assessment does not indicate the same level of technical analysis. There has been no slavish adherence to BRE Guidelines. Buildings to the north of the site, on Brunswick Street North, are the ones which will be most impacted. These windows will be most affected in winter, but will receive more than 25% of probable sunlight hours from 21st March to 21st September. The rear elevation of 98 Brunswick Street North will be impacted somewhat.
- An open yard does not warrant the same level of scrutiny for daylight and sunlight as do indoor residential spaces. The space will continue to receive appropriate levels of daylight; and commercial operations would be materially unaffected.
- The development will have no direct effect on the architectural heritage of Protected Structures in the surrounding area.
- It is acknowledged that redevelopment of the site will result in a considerable change to the visual environment. Different people will react differently to the changes – which overall may be viewed as moderate.
- The unit mix to be provided, meets with what is required from the social housing list of this area of the city.

6.3. Planning Authority Response

None received.

6.4. Observations

None received.

6.5. Further Responses

6.5.1. 3rd Party Response to 1st Party Appeal

The response of BPS Planning Consultants Ltd, of 13th October 2022, can be summarised as follows-

- The Board is looking at this development *de novo*.
- Without condition 6, this permission would have been refused. Notwithstanding this, the 3rd Party appellant considers that the condition is insufficient to make this development acceptable.
- The development does not protect the historic streetscape on Church Street Upper.
- The appellant supports the provision of social housing on this site, but not at the density proposed.
- Block A is three storeys too tall, and block B is two storeys too tall.
- The applicant's desire is to fit as many units as possible on the site.
- The context of the site is two-, three- and four-storey buildings. The reference to 24m height in residential structures being open for consideration, has to be considered in the context of what surrounds it.
- BRE 2022 is for guidance purposes only. The scheme should be aiming to hit medium or high standards – rather than only trying to meet minimum standards.
- That the site is vacant, is an irrelevant consideration in relation to proper planning.

- Condition 6 should be further amended so that the impact of the building on the beer garden is addressed.
- The Board needs to balance fairly, the right of the developer to develop this property with the rights of surrounding owners and occupants.
- Block C should be reduced to two storeys as it addresses the beer garden; and stepped back from the boundary.

7.0 Assessment

7.1. Development Plan

- 7.1.1. The uses proposed for this site are in accordance with the 'Z5' zoning. The indicative plot ratio for this site is 2.5-3.0. The original proposal had a plot ratio of 3.8 (4,079 sq.m divided by 1,067 sq.m). The additional information submission reduced the number of apartments from 52 to 45. The consequent reduction in floor area was not specified. Permission was granted for a development of 41 units (4 units excluded by way of condition 6.a), which further reduces the plot ratio. I calculate the figure to be roughly 3.1, which, all other things being equal, would be considered acceptable. The Plan gives a site coverage of 90% on sites such as this one; the proposed site coverage is 75%.

7.2. Design & Layout

- 7.2.1. All comments in this section relate to the scheme as permitted by DCC – regard being had to condition 6.a, which required the removal of the fifth floor from block A of the development.
- 7.2.2. Positioning of Blocks on the Site

The footpath on Brunswick Street North is less than 2.0 m wide – at one point, only 1.35 m. The additional information submission sought provision of a 2.0 m wide footpath on this entire frontage. This involved a very minor repositioning of block B to the south. Blocks A & B are one building – with two separate entrances from Brunswick Street North. The applicant argues that the massing of the blocks has been broken up, but the appellant correctly points out that the two blocks are one –

the only difference being in the heights of different parts of the one block. Block C is stand-alone; accessed from the courtyard area.

Block A will define the corner of Brunswick Street North and Church Street Upper – being of six storeys, whereas block B is five storeys. Block A is to the north of 117 Church Street Upper, and whilst considerably taller, will not have a significant impact on this building – which presents a blank gable wall to the appeal site. I elsewhere in this Inspector’s Report on the impact of block A on the streetscape of Church Street Upper. I further make comment on the impact of the block, in association with block B, on the daylight and sunlight of residential buildings on the opposite side of Brunswick Street North.

Block B is set back between 3.0 m and 4.3 m from the boundary with the beer garden to the south. There is high wall between the properties – up to 5.5 m in one place, where part of the gable wall of a now-demolished building on the appeal site stood. There will be no overlooking from the courtyard into the beer garden. However, all four upper floors of the block will, to a greater or lesser extent, overlook the beer garden. The living-rooms and balconies of three apartments on each of the upper four floors will directly overlook the beer garden. The separation distance is insufficient, and block B would seriously detract from the attractiveness and use of the beer garden. Its proximity to the boundary would also affect the future development potential of the beer garden. I would agree with the contention of the 3rd Party appellant, that the beer garden has been treated as open space for light purposes for the development. If the owners of the beer garden were to erect a four storey block on the boundary wall (as the applicant is proposing to do with block C), the resulting courtyard to the south of block B would be a very poor amenity space indeed, and the outlook from apartments on the first, second and third floor of block B would be to a blank wall, rather than over an open area as exists at present. The amenity of future occupants of all 14 apartments on the south side of the block would be severely compromised. Permission should be refused for reason of inadequate set-back from the boundary with the beer garden, detrimental impact on the future development potential of the beer garden and devaluation of adjoining property.

Block C abuts an open basement area and open space associated with King’s Court Apartments to the south. The three- and four-storey block is built between 1.2m and 2.2 m from the southern boundary – which is partly undefined. There is a small area

of land on part of this boundary which appears to be no-mans-land – the mesh metal fencing of the garden area for King’s Court Apartments being set back in line with the adjoining school wall. The adjoining open basement area is of poured concrete. It is not clear to what site it is joined. If this basement area were to be built upon, the four apartments within the four-storey part of block C would be seriously impacted – as balcony areas extend almost to the boundary. Block C could seriously impact on the development potential of this basement area; or, if the basement area was developed, the amenities of the apartments within the four-storey element of block C could be negatively impacted. Permission should be refused for this reason. The apartments in the three-storey part of the block are, to some extent, piggy-backing on the open space provided within the King’s Court Apartments complex – being located very close to the fence boundary. The five-storey apartment block within the King’s Court Apartments complex is set back approximately 20m from the boundary with the appeal site – whilst the three-storey block within the King’s Court Apartments complex is positioned at right-angles to block C. This garden area is unlikely to be developed – arising from the positioning of blocks within the King’s Court Apartments complex. The proposed development would seriously detract from the amenities of this open area serving an adjoining apartment complex; and permission should be refused for this reason.

7.2.3. Unit Mix

All apartments within this scheme are either one-bedroom or two-bedroom (three-person) units. The original proposal provided for 26 of each type. The permitted development will provide for 21 one-bedroom and 20 two-bedroom (three-person) units. It has been argued by the 3rd Party appellant that there should be a better mix of unit sizes and types; and that three-bedroom units should be included. The applicant points out that the scheme is for social housing, and that the proposed mix is what is required in the area. The Apartments Guidelines, at sections 3.5 & 3.6 specifically allow for two-bedroom (three-person) units for social housing purposes. I note that the Housing Department of the Council supports the application and is satisfied with the unit mix. Having regard to the limited size of the scheme, and to the stated housing need in the area, I would be satisfied that the unit mix proposed is acceptable. I note that the development does not contain any studio units. Three units are own-door apartments – not accessed from any stair-core.

7.2.4. Communal Open Space Within Development

Open space for residents is provided in the form of a courtyard between blocks B & C of 144 sq.m and a roof terrace for block A of 54 sq.m (total 198 sq.m). Section 15.9.8 of the Plan states that on infill sites of less than 0.25ha (such as this one), communal amenity requirements may be relaxed on a case-by-case basis – to reflect the Apartments Guidelines. The Guidelines require minimum communal amenity space areas of 5 sq.m for one-bedroom apartments and 6 sq.m for two-bedroom (three-person) apartments. There were 26 one-bedroom and 26 two-bedroom (three-person) apartments originally proposed – giving rise to a requirement of 286 sq.m of communal open space. The number of apartments was reduced by way of additional information to 23 one-bedroom units and 22 two-bedroom (three-person units). This would have reduced the requirement for communal open space to 247 sq.m. The grant of permission required the removal of a further 4 apartments (two of each kind), which would further reduce the requirement for communal open space to 225 sq.m. The quantum of open space changed minimally with the additional information submission – with the courtyard being reduced in area to 141 sq.m, whilst the roof terrace was increased in area to 56 sq.m. The shortfall within the permitted development is, therefore 28 sq.m. I would be satisfied that this quantum would closely meet with the recommended minimum, notwithstanding that the quantum can be relaxed because of the size and city-centre location of the site. Elsewhere in this Inspector's Report I comment on the shape and usability of the courtyard area.

The additional information submission provided an opaque glass balustrade to the roof terrace – to prevent overlooking of adjoining properties to the south and southwest. This terrace will only be readily accessible to residents of block A.

The courtyard will be accessible to residents of all three blocks – with a dedicated passage entrance off Brunswick Street North – immediately adjacent to 98 – a Protected Structure. This passageway cannot be considered to function as communal open space. A bicycle store has been placed, in what is likely to be the sunniest spot in the courtyard. Direct access to two ground-floor units within block C would further restrict the usability of this part of the courtyard. Permission has been sought for an extension to the adjacent school which, if granted, would further restrict western sunlight into what would be an already overshadowed area from block C.

The 3rd Party appellant has likened the courtyard to a tunnel area of little practical amenity value. I consider that its width alone would not allow it to function as much more than a passage – particularly as ground-floor units within block B directly address it.

The southern boundary with the beer garden is currently a wall of between 3.5 m and 5.5 m in height. It is not clear who owns this wall, and whether its height is to be altered. One way or another, it will overshadow what is a narrow space to the south of block B – ranging from 3.1 m to 4.2 m in width. Landscaping proposals for this courtyard area show six trees within the courtyard – at least two of which are located in the narrowest part of the courtyard between block B and the beer garden. Such trees would further restrict daylight and sunlight in this area. The applicant is proposing to erect a four-storey high wall on the western boundary of the beer garden, for block C. If the owners of the beer garden were to seek permission for something similar on their northern boundary – the result would be a severely over-shadowed courtyard space within this development. Block C, at three and four storeys, will already cast a shadow over the western end of the courtyard. The positioning of the blocks on the site will render this courtyard area of poor amenity value for future residents – particularly those in blocks B & C which will not have ready access to the one roof terrace; as will residents of block A. Permission should be refused on grounds of the poor quality, rather than the quantum, of the communal open space proposed.

7.2.5. Private Open Space

All apartments are provided with balconies or terraces. The Apartments Guidelines 2022, require a minimum of 5 sq.m for one-bedroom units and 6 sq.m for two-bedroom (three-person) units. The additional information Schedule of Accommodation submission indicates that these requirements are met for all apartments – being marginally exceeded in some cases. The ground floor units within block C have more generous spaces on the south side of the building. As referenced elsewhere in this report, there seems to be a piece of no-mans-land between block C and the garden area of King’s Court Apartments to the south. This area allows half of the south side of block C to have more space to the rear. There is a basement area constructed immediately to the rear of the other half of block C (the four-storey portion). This area does not form part of the appeal site, and if

developed or built upon, would severely impact on the amenity of block C. It is not likely that the garden area of King's Court Apartments will be built upon – given that there are apartments addressing it on two sides (north and east).

Balconies and terraces for the 7 units in block C face full south. One apartment in block A has independent access from Brunswick Street North, via its terrace. This terrace, addressing the footpath at ground level, will offer a poor level of amenity for occupants, notwithstanding that it is 0.6m above the level of the footpath. The terrace faces full north. Four further balconies stacked above this terrace (also serving apartments within Block A), similarly, face full north. It is acknowledged that daylight levels will improve with progression to higher floors. Within block A, a further 9 units have balconies which face full east. Of the remaining 6 within the block, 5 face north/east; and 1 faces south/west/north. Within block B, balconies for all 14 units face full south. To some extent, the development is constrained by having its street frontages on the north and east boundaries.

7.2.6. Minimum Floor Areas & Room Sizes

The Apartments Guidelines require 45 sq.m minimum floor areas for one-bedroom units and 63 sq.m for two-bedroom (three-person) units. All units within the scheme exceed the minimum floor area requirements. The Guidelines state that two-bedroom (three-person) units are permissible only in limited circumstances. Section 3.5 of the Apartments Guidelines specifically refers to two-bedroom (three-person) units for social housing purposes. Section 3.6 allows Planning Authorities to consider such units – with a minimum floor area of 63 sq.m. The applicant, with the support of the Housing Authority, has argued that units of this size are required in this area to meet a stated social housing need. This would seem to be reasonable.

Living/kitchen/dining rooms within one-bedroom units must be a minimum of 23 sq.m area and at least 3.3 m in width. For two-bedroom (three-person) units, the minimum requirements are 28 sq.m and 3.5 m. With regard to minimum floor areas, all units meet or slightly exceed the standards. Within the scheme, as permitted, 14 of the apartments (one third) do not meet the minimum width standards – the maximum extent of the shortfall being 0.15 m – with some less than this amount. The Apartments Guidelines allow for a variation of up to 5% to be applied to room areas and widths, subject to overall compliance with required minimum overall

apartment floor areas. The variation in the case of the apartments within this scheme is no greater than 4.5%; and so can be allowed.

Single bedrooms must be a minimum of 7.1 sq.m and at least 2.1 m in width. Double bedrooms must be 11.4 sq.m and 2.8 m in width. There are no twin bedrooms within the scheme. Two-bedroom (three-person) units require an additional aggregate bedroom floor area of 20.1 sq.m. All units meet the minimum floor area standards or slightly exceed them. The Schedule of Accommodation submitted with the application does not list bedroom widths – as required by the Apartments Guidelines. I have examined the drawings submitted, and am satisfied that all bedrooms meet with the requirements in terms of minimum widths.

Section 3.8 of the Apartments Guidelines requires that the majority of apartments within a scheme of 10 or more units, exceed the minimum floor area standard for any combination of unit types, by 10% at least. The Schedule of Accommodation (submitted by way of additional information submission) calculates the 10% figure is exceeded by 137 sq.m. This will not have changed materially through the requirements of condition 6.a. Section 3.15 of the Apartments Guidelines states- 'The requirement for the majority of all apartments in a proposed scheme to exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%, does not apply to any proposal with less than ten residential units. For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, where between 10 to 49 residential units are proposed, it shall generally apply, but in order to allow for flexibility, may be assessed on a case-by-case basis and if considered appropriate, reduced in part or a whole, subject to overall design quality'. This site is less than 0.25ha on an urban infill site. Whilst 52 units were originally applied for, only 41 were granted permission – so the scheme could be considered to be between 10 and 49 units. On a case-by-case basis, an argument has been made for social housing units of this mix in this area.

In relation to minimum floor-to-ceiling heights, section 3.22 of the Apartment Guidelines requires a minimum of 2.7 m at ground floor level – with a recommendation for 3.0m where possible: this allows for future adaptability of a building. All ground-floor units within the three blocks have floor-to-ceiling heights of 2.7 m. Upper floor areas are recommended to be 2.4 m. All upper floors within the

three blocks have floor-to-ceiling heights of at least 2.55 m – 0.15 m in excess of the recommended minimum. The 3rd Party appellant has argued that the floor-to-ceiling heights within the blocks should be reduced, in order to lessen the overall heights of the blocks, so that they would not impact so greatly on surrounding property. I do not consider that minimising the floor-to-ceiling heights would be in the best interests of future residents. It would do little to reduce the heights of the blocks, and is not the solution to the problem of impact on adjoining properties.

7.2.7. Apartment Orientation

Section 3.16 of the Apartments Guidelines states, that in more urban schemes, where there may be a terraced or perimeter block pattern wholly or partly fronting a street, dual aspect orientation may not be achievable. Dual-aspect apartments are to be favoured due to increased levels of light and better cross-ventilation.

Ultimately the orientation of living spaces is the most important objective. Section 3.17 requires that at least 33% of units be 'dual aspect' in central areas such as this one. Section 3.18 states, that where single-aspect apartments are provided – the number of south-facing units should be maximised. Next most desirable is west- or east-facing apartments. North-facing units may be considered where overlooking a significant amenity such as a public park or garden or formal space such as a water body or other amenity feature. Particular care is needed where windows are located on lower floors that may be overshadowed by adjoining buildings. On sites of up to 0.25ha in urban infill schemes, these requirements may be relaxed in part, on a case-by-case basis, subject to overall design quality. 'Dual aspect' units can include corner units.

Within Block A there are 5 units which face north only. An indent in the façade of the block (as it faces onto Brunswick Street North), measuring 6.0 m across, has been inserted, in an attempt to provide a western aspect to living-rooms in the affected 5 units. I would not consider that such a narrow indent in the façade of the block could be considered to turn these units into corner units – as referred to in the Guidelines. A further five units in the block face east only. This is preferable to north-facing units – particularly as Church Street Upper is a broad thoroughfare; unlike Brunswick Street North which is narrower. Some 5 units in the block face north/east; 1 unit faces north/west and 4 units face east/south/west.

Within block B, 5 units face north/south, 4 units face north/south/west and 5 face south only. All living rooms face south and some face south/west.

The 7 units within block C, all face both north and south. All living-rooms are south-facing. I have elsewhere in this Inspector's Report commented on the proximity of this block to the southern boundary, and the likely impacts which development on an adjoining site to the south could have on four apartments within this block.

Significantly more than 33% of units face more than one direction; and of those that face one direction only; just 5 face full north. It would be more desirable that no units face north only. The exception for north-facing units addressing public open space or an open waterbody does not apply in this instance. If the block were set back further from the boundary with the beer garden, the resulting narrower building would likely permit of 'dual aspect' apartments, with an exception made for units facing south only.

7.2.8. Storage Areas

Storage is provided within each apartment in the scheme. There is no communal storage area. The Apartments Guidelines require 3 sq.m storage space for one-bedroom apartments and 5 sq.m for two-bedroom (three-person) units. Areas equalling or exceeding the requirements are provided for all units. Storage areas for apartments BB-00-02, BB-01-02, BB-02-02, BB-03-02 & BB-04-02 within block B are broken up into three separate spaces, which are poorly configured and would not be usable for storage of larger items.

7.2.9. Lift & Stair-Cores

Blocks A & B are provided with lifts, whilst block C is not. The Apartments Guidelines require that no more than 12 apartments/floor/core be provided – although this can be exceeded on urban infill sites such as this one. The core in block A serves 19 units. The configuration of the front entrance lobby, rear entrance lobby, lift and stair-core to block B is complex – presumably to facilitate universal access. It does not appear to be possible to access the stair-core from the front lobby, without passing through the lift; and as the ground levels are different – to pass through the lift would involve a lift journey of 0.6 m. This would be an inconvenience for residents, particularly if the lift was out of action – necessitating entry to the building from the courtyard: some 14 units take access from this core.

Within block C, there are 2 duplex units with independent access from the courtyard. The remaining 5 units in the block take access from the one stair-core. To access the third-floor apartment within this block requires considerable stair-climbing – not convenient for heavy shopping.

7.3. Over-shadowing

- 7.3.1. The application is accompanied by a 'Daylight and Sunlight Assessment Report, which was modified to reflect changes to the scheme by way of additional information submission. There will be no significant impacts on the terrace of buildings to the south on Church Street Upper – apart from late summer evenings. Similarly, the blocks will not have any impact on King's Court Apartments to the south. The development will not have any significant impact in terms of overshadowing on Kevin Barry House flats on the opposite side of Church Street Upper – regard being had to the width of this widened thoroughfare.
- 7.3.2. Block A is located directly to the south of 'The Hardwicke', a four-storey apartment block (with a small three-storey element), which is set back slightly from the public footpath. Immediately to the west, 3 Brunswick Street North and its adjoining two-storey annexe (referred to in the Study as 103 Morning Star Avenue), are located immediately at the back of the pavement, and will be considerably overshadowed by block A. This block will result in some early morning overshadowing of the beer garden to the southwest. The popular use times for this facility will be afternoons and evenings – particularly if sunny. Block B is some 9.1 m from the façade of 3 Brunswick Street North. These two buildings opposite, currently benefit from uninterrupted sunshine on their southern faces because almost all traces of buildings on the appeal site have been obliterated. Notwithstanding this, it would not be reasonable, in a city centre setting such as this one, to require that the *status quo* be maintained. The permission allowed for a six-storey block A. I would agree with the contention of the 3rd Party appellant, that even this is too high. A five-storey block A could be considered at this junction, which would somewhat lessen the impact in terms of overshadowing.
- 7.3.3. Block B will also result in overshadowing of buildings on the other side of Brunswick Street Upper – particularly no. 3 during the afternoon and evening. This five-storey

block should be reduced to four storeys, to reduce the level of overshadowing. I have elsewhere in this report argued that block B should be stepped away from 98 Brunswick Street Upper, in order to lessen the visual impact on this Protected Structure. The block overshadow of this house and its rear yard in the morning.

7.3.4. Block C will result in some morning overshadowing of the adjoining school site to the west. However, I note that permission has been sought to erect two-storey extension with roof play area, close to the boundary with the appeal site. The proposed block C will not, therefore, have any significant impact on the school grounds – assuming development permission as sought, is granted and goes ahead. Block C will also result in some overshadowing of 98 Brunswick Street North and its rear yard: this house has no other amenity space. Block C will result in overshadowing of the beer garden to the east, where a four-storey gable elevation is to be constructed on the boundary. The gable is 13.2 m high. The existing boundary wall is 3.5 m - 4.0 m high at this point. The additional height would result in serious overshadowing of the beer garden, and loss of amenity for patrons. The 3rd Party appellant has argued that the building should be set back from the boundary wall, and reduced in height to three storeys (elsewhere to two storeys). This block, in turn, overshadows the courtyard area of the scheme itself, and should be reduced in height. I have argued elsewhere in this Inspector's Report on the impact the block would have on the amenity space of King's Court Apartments – but not in relation to overshadowing.

7.3.5. The proposed blocks would result in varying degrees of overshadowing which would negatively impact on the residential amenities of apartments on the opposite side of Brunswick Street North (particularly ground and first floor windows), the beer garden of "Bonobo" and the courtyard communal amenity area of the scheme itself. The blocks need to be reduced in height and redesigned, in order to ameliorate impacts on surrounding property and also the amenity space of the scheme itself. Permission should be refused for this reason.

7.4. **Streetscape Impact**

7.4.1. Block A is located on the junction of Brunswick Street North and Church Street Upper. That the site is currently vacant and somewhat unsightly, cannot be used as

a reason for granting permission for something which would detract from the visual amenities of the area. The pocket park on part of the site does add something to the visual amenity of an otherwise unsightly site. 'The Hardwicke' on the other side of North Brunswick Street is four storeys. I would consider that a five-storey building could be accommodated on this corner, with appropriate stepping up from the terrace of buildings, of which 117 Church Street Upper abuts the appeal site. This terrace of buildings to the south of block A is stated to date from the early 18th Century – and is only of three storeys. Whilst the bookmakers' premises is not included in the list of Protected Structures, it does feature in the National Inventory of Architectural Heritage (NIAH); as does "Bonobo" – formerly known as "The Richmond". The six-storey block on this corner is too abrupt a change in scale, and towers over the attractive streetscape formed by this short terrace to the south. The blank gable elevation (only relieved at upper level by the communal roof terrace), detracts from the visual amenities of the street; and permission should be refused for this reason. The Archaeology Section of DCC similarly expressed concern in relation to the impact of block A on the streetscape. The almost blank gable elevation of block B, as it addresses 98 Brunswick Street North, towers over the Protected Structure, and is particularly dominant when approaching along Brunswick Street North from the west – the direction of the one-way traffic flow. The block has not the benefit of any set-back from the Protected Structure into which landscape planting could be introduced to soften the abrupt change in scale – the access passage not being wide enough. The proposed development should be refused permission because of the detrimental impact on the Brunswick Street Upper streetscape.

7.5. Protected Structures

- 7.5.1. There are no Protected Structures on the site. The site abuts 98 Brunswick Street North (a Protected Structure) on two sides. The rear yard area of this house is to be enlarged through a small piece of land which is outlined in blue on drawings submitted. This will square-off the yard area to the rear. The house has a small, two-storey return to the rear. It is separated from block C by 11.4m (as measured to the back wall of the main house – but excluding the return). This separation distance is sufficient to ensure that the block – mostly three-storey where it is directly behind the

house – will not impact unduly on the Protected Structure. Block B has been separated from the gable elevation of 98 by a 1.5 m passageway. This separation is sufficient to ensure that the block will not have any structural impact on the Protected Structure. However, the five-storey, almost blank, gable elevation of the block will tower above the Protected Structure and severely detract from its setting – particularly when approaching from the west along Brunswick Street North. The block needs to be stepped back as it climbs in height in order that it does not tower over the Protected Structure. Permission should be refused on grounds of damage caused to the setting of a Protected Structure.

7.5.2. The 3rd Party appellant claims that the development will impact negatively on 119-121 Church Street Upper, which is a Protected Structure. The appellant argues that the curtilage of the Protected Structure (in this case the beer garden) also derives protection. The Protected Structure is protected, because the three-storey street-front portion, which also forms part of an early 18th Century terrace on Church Street Upper. The structure has not been included in the list because of its beer garden. The area of the beer garden does not contain any 18th century features. Some parts of its boundary walls may be of 18th century date – but the applicant is not proposing to make any alterations to the boundaries. The proposed development will not have any direct impact on the Protected Structure *per se*. Elsewhere in this Inspector's Report, I make comment in relation to the impact of the development on the streetscape of this part of Church Street Upper – but this is distinct from impact on the Protected Structure itself, as a building.

7.5.3. The development will not have any significant impact on Carmichael House (a Protected Structure) on the opposite side of Brunswick Street North. This building is set back from the street and elevated above street level – in community use.

7.6. Traffic & Parking

7.6.1. The site is particularly well-served by public transport – both bus and Luas. Church Street Upper is part of a Bus Connects Radial Core Bus Corridor (CBC). The site is within easy walking distance of all services and community facilities. The site is within Parking Zone 1 of the Development Plan – wherein a maximum of 0.5 spaces per dwelling unit is indicated. A relaxation of maximum car-parking standards will be

considered for any site which is well-served by public transport. The retail unit on site would require 0.3 parking spaces, as per Annex 5 of the Plan – such a fraction can be discounted as unfeasible. The application was accompanied by a Transport Statement including Residential Travel Plan. This document outlines the public transport options available, the walking catchment, limited on-street parking in the area, and the nearby cycling network. The document included a Framework Residential Travel Plan; establishing modal split targets and measures to achieve this split – including appointment of a Travel Plan Co-ordinator, training for sales/letting staff of units, a Sustainable Travel Information Pack and a Residential Travel Survey. The Strategy will be monitored for performance. The Transportation Planning Division of DCC was satisfied that no on-site parking provision proposed. Additional information was sought in relation to bicycle parking within the development. Two bicycle parking areas are to be provided at ground level – one within block B; and the other, a covered area to the north of block C. Provision is made for 93 parking spaces – including for cargo bicycles. The Planning Authority was satisfied with this level of provision. I would agree with this conclusion.

7.7. Water Supply, Drainage & Flooding

7.7.1. Water Supply

It is proposed to connect to an existing 12” cast-iron pipe in Brunswick Street North. The Civil Infrastructure Report for Planning, submitted with the application, states at section 1.5.2- ‘A Pre-Connection Enquiry was submitted to Irish Water on 03/12/2021 providing proposals for both foul drainage and water supply connections and flow rates. Irish Water provided a Confirmation of Feasibility letter on 08/12/2021 confirming that both water and wastewater connections were feasible without any need for public infrastructure upgrades. Please refer to Appendix VI’. The letter referred to is included at Appendix VI, and it can be concluded that capacity exists at present.

7.7.2. Foul Drainage

Foul waste will be discharged to a 300 mm diameter concrete combined sewer in Brunswick Street North. Comments in the previous subsection are of relevance in relation to this issue, and confirms capacity exists to serve the development.

7.7.3. Surface Water

It is proposed to discharge surface water to a 300 mm diameter, concrete, combined sewer in Brunswick Street North; as there are no dedicated surface water sewers in the area. A spur for connection to a future dedicated surface water sewer in Brunswick Street North will be provided. All blocks are to be provided with green roofs as part of SuDS measures – with the exception of the roof terrace area of block A. A surface water attenuation tank of 35 cubic-metre capacity is to be provided underground within the courtyard and beneath the bicycle storage shed. Discharge from this tank is to be throttled at 2 l/s using an ‘Hydrobrake’ flow control mechanism (located within the bin store). These arrangements were acceptable to DCC. I would be satisfied that the arrangements for handling surface water within the site are acceptable.

7.7.4. Flooding

Section 3.0 of the Civil Engineering Infrastructure Report for Planning, is a site flood risk assessment. There are no Office of Public Works (OPW) records of historical flooding events in this area. The scheme contains no basement and is located within Flood Zone C – less than one-in-one-thousand chance of flooding from rivers or the sea. Residential use is considered ‘Highly Vulnerable’. A Justification Test is not required for residential development within Flood Zone C. The lowest residential Finished Floor Level (FFL) within the scheme is 7.625 m.

7.8. **Other Issues**

7.8.1. Retail Unit

The ground-floor retail unit is located on the corner of the building – addressing both street frontages. At 106 sq.m, it is not large. It does not have any access to the Bin Store within the courtyard. It does not appear to have any toilet area either. Parking for two bicycles is provided beside the door. No details of fascia or shop signage were submitted with the application. Condition 6.b of the permission required a brick band (to match the finish of block A) to be provided between the ground and first-floor levels of the block – and this to be the fascia level of the permitted shop. This would appear to be reasonable – to reflect the fascia level of the adjoining

bookmakers' premises at 117 & 118 Church Street Upper (notwithstanding the proposed intervening electricity substation bay).

7.8.2. Public Open Space

Table 15.4 of the Plan indicates a requirement for 10% public open space on 'Z5' zoned lands. There is no public open space provided within the development. The site is too small for this to be feasible. Condition 4 of the permission required payment of a development contribution *in lieu* of on-site provision – the amount set at €164,000 for 41 apartments – equivalent to €4,000 per unit. This was acceptable to the applicant, and is a reasonable solution for such a small site.

7.8.3. Bat Roosts

The Development Applications Unit of the Department of Housing, Local Government & Heritage expressed concern in relation to potential bat roosts within ivy-covered walls within the site. It was concerned that the survey, outlined in the Ecological Impact Assessment Report submitted with the planning application, had not been carried out at an optimal time of year. The additional information submission contained a Bat Survey Report – dated June 2022, with a survey for roosts carried out on 22nd of the month. Neither wall crevices nor growing ivy contained any roosts. A further visual survey would be required prior to commencement of construction, as bats could take up residence between the date of survey and the date of commencement of construction. Condition 12 of the Notification of decision to grant permission reflected this.

7.8.4. Invasive Species

The Development Applications Unit of the Department of Housing, Local Government & Heritage expressed concern in relation to potential invasive species within the site – in particular, Japanese Knotweed. It was concerned that the survey, outlined in the Ecological Impact Assessment Report submitted with the planning application, had not been carried out at an optimal time of year. The site is an urban infill one. It has recently been cleared of most of its vegetation. A pocket park exists at the junction of the two streets. The only invasive species encountered was Buddleia – the butterfly bush. Methods of dealing with this are outlined in section 7.1.6.1 of the Report. In the absence of evidence that there are invasive species on the site, such as Japanese Knotweed, it would be unreasonable to refuse permission

for this reason. Contractors carrying out any development on the site would have to adhere to precautions in relation to the introduction or spread of invasive species.

7.8.5. Electricity Sub-station & Bin Store

A sub-station is provided within block A: doors will open onto Church Street Upper. It will be located immediately adjacent to 116 – a bookmakers' premises. The location is acceptable. A communal bin store is located at courtyard level within block B. It will be accessible to all three blocks (but not the retail unit) – unless via the footpath along Brunswick Street Upper. The location will facilitate bins being wheeled out onto Brunswick Street North for emptying. The footpath, even widened to 2.0 m, will not be wide enough to store large wheelie-bins; collection will have to be from the store itself, as the passage is not wide enough, and landscape drawings indicate some planting within this passage area.

7.8.6. Construction Environmental Management Plan

The application was accompanied by an Outline Construction Environmental Management Plan and a Construction & Demolition Waste Resource Management Plan. Basement excavation is not proposed. The site is a constrained one. Both adjoining roads are heavily-trafficked. Construction traffic management, set-down and loading/unloading will require careful consideration. There is a school nearby on Brunswick Street North. Facilitating machinery, equipment, site offices and staff welfare facilities will be complex. A detailed Construction Environmental Management Plan will have to be agreed with the planning authority prior to commencement of any development, as per conditions 15, 19 & 20 of the Notification of decision to grant permission. The 3rd Party appellant is concerned that the construction phase will cause nuisance to patrons using its beer garden. There is no reason why development on this site should impact on neighbours any more than happens at other construction sites within the city. Hours of construction restrict the times of building works. I do not see that the alterations to hours of construction to one hour later each morning, as suggested by the 3rd Party appellant, would make any significant difference to amenity. This site is located at the junction of two heavily-trafficked streets. The hours of construction as suggested by the planning authority are adequate to protect amenity in the area. Normal measures to prevent the spread of dust and noise, should protect the amenities of adjacent

properties. There is no need for any special acoustic barrier during construction. It will be incumbent upon the developer to prevent any damage to adjoining properties during excavations or construction, though vibration. As with all construction projects, the period of construction will be of limited duration. Future residents of this scheme would likely have to facilitate redevelopment on adjoining sites, at some stage in the future.

7.8.7. Part V

The Planning Application Report submitted by the applicant states at section 4.14- 'Notwithstanding the fact that this development is designated as a 100% social housing scheme, the applicant is required to comply with the provisions of Part V. In this regard, please see attached letter from Dublin City Council which confirms that the proposals are acceptable in principle'. The Housing & Community Services Section has engaged with the applicant. The additional information submission included a letter of support for the application. Condition 23 of the Notification of decision to grant permission required compliance with Part V. The fact that the scheme is a social housing one does not mean that it should be treated any differently to another apartment development scheme – and must be judged on its merits.

7.8.8. Archaeology

The Archaeology Section of DCC had concerns in relation to disturbance to ground within an area of archaeological potential associated with Dublin City – Recorded Monument DU018-020 – Historic City. Concern was also expressed in relation to the impact of high buildings on the historic streetscape. The additional information submission contained an Archaeological Assessment which included test trenching. Mitigation measures proposed were acceptable to the Archaeology Section – relating to preservation *in situ* and by record. Condition 11 of the Notification of decision to grant permission, reflected the requirements of the Archaeology Section. I would agree with the conclusions reached in relation to protection of any archaeological material within the site.

7.8.9. Development Contributions

Condition 2 required payment of Development Contribution of €255,049.73.

Condition 3 related to a Supplementary Development Contribution of €86,031.80

towards Luas Cross City Scheme. Condition 4 required payment of a Development Contribution of €164,000 *in lieu* of public open space provision for 41 apartments. There has been no 1st Party appeal against these conditions. In the event of a grant of permission, similarly-worded conditions should be attached.

7.8.10. Naming & Numbering

Condition 8 of the Notification of decision to grant permission related to naming and numbering. A similarly-worded condition should be attached to any grant of permission from the Board.

8.0 **Recommendation**

I recommend that permission be refused for the reasons and considerations set out below.

9.0 **Reasons and Considerations**

1. The proposed development would seriously injure the amenities of residential units on the opposite side of Brunswick Street, by reason of overshadowing.
2. The communal open space courtyard area within the scheme, by reason of its narrowness, shape, orientation, disposition of blocks within the scheme and overshadowing, would provide a poor standard of amenity for future residents, and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The 5 north-facing units within block A would offer a poor level of amenity for future residents, and would be contrary to section 3.18 of the 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities', issued by the Department of Housing, Local Government and Heritage in December 2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
4. The almost blank gable elevation of block B, as presented to 98 Brunswick Street North, has insufficient set back from the Protected Structure, and would

seriously detract from the setting of the house – particularly in views approaching from the west along the street.

5. The height of block A and the blank gable elevation presented to the terrace of 18th Century buildings to the south, on Church Street Upper, would detract from the streetscape on this part of the street and would be detrimental to the visual amenities of the area.
6. The proposed development, by virtue of the height and proximity of blocks B & C to the beer garden of “Bonobo” public house, would seriously injure the amenities and depreciate the value of this property.
7. The proposed development, by virtue of the proximity of block C to the southern boundary of the site, would seriously injure the amenities and depreciate the value of adjoining property, and would detract from the amenities of the communal open space of King’s Court Apartments through overlooking.

**Michael Dillon,
Planning Inspectorate.**

13th March 2023.