



An
Bord
Pleanála

Inspector's Report

ABP-315256-22

Development	Demolition of building, construction of 4 storey building with 13 apartments and all associated site works.
Location	Existing commercial premises at Church Road, East Wall, Dublin 3, D03 XY06 (bounded by Church Road and Blythe Avenue).
Planning Authority	Dublin City Council North.
Planning Authority Reg. Ref.	3283/22.
Applicant	EWD3 Developments Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with Conditions.
Type of Appeal	First Party V. Condition 4. Third Party V. Grant.
Appellants	EWD3 Developments Ltd. (First Party) Steve O'Connor (Third Party).
Observers	None.

Date of Site Inspection

17th July 2023.

Inspector

Terence McLellan

1.0 Site Location and Description

- 1.1. The appeal site refers to the building and plot located on the corner of Church Road and Blythe Avenue, which is a largely residential area in the Docklands. Although single storey, the existing building is the equivalent of one and a half storeys in height and occupies the entirety of the rectangular plot. The building has street facing frontages on three sides and acts as bookend to the terrace of dwellings on Blythe Avenue, which marks the eastern boundary of the site. Architecturally, the existing building is warehouse/industrial in character and was most recently occupied by the East Wall Credit Union, which has since relocated to new premises.
- 1.2. The surrounding area is residential in nature, comprising largely two storey terraced dwellings (such as those to the north and east), although there are examples of modern flatted developments nearby. Church Road originally extended to the Royal Canal but was diverted to the south west along the rear of the dwellings on Blythe Avenue, as a result of the development of the dockland railways. The railway line to the North Wall Freight Depot sits adjacent to the southern and western boundaries of the site. Malachi Place lies to the west of the site, this is a cul-de-sac occupied by some single storey cottage dwellings and a car repair business.
- 1.3. Church Road is served by Dublin Bus route 53 (Dublin Ferryport to Talbot Street) and route 151 (Docklands to Foxborough) runs from nearby East Road. Spencer Dock Luas Station is approximately 700 metres from the site. East Wall Road is located approximately 600 metres to the north and forms the main shopping/commercial area for the neighbourhood. There is a smaller parade of shops on Church Road, about 400 metres north of the appeal site, as well as a medical centre approximately 200 metres to the east.

2.0 Proposed Development

- 2.1. The proposal is for the demolition of the existing buildings on site and redevelopment to provide 13 flatted dwellings in a part two/part three/part four storey building. The main entrance would be from Church Road which would give access to the lobby and a cycle store accommodating 34 cycles in two tier stands. The schedule of accommodation would include 1 No. studio apartment, 7 No. one bedroom units, 1 No. two bedroom (three person unit), 4 No. two bedroom (four person) units.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission was issued by Dublin City Council (DCC) on 10th November 2022. A total of 18 conditions were imposed on the planning consent. The conditions are generally standard except for Condition 4 which relates to the omission of the ground floor residential use and is set out in detail, below:

4. The ground floor use shall be omitted from the development and any future use of this area shall be subject to a separate planning permission.

Reason: In the interests of clarity and orderly development.

3.2. Planning Authority Reports

- 3.2.1. The report from the Deputy Planning Officer was initially issued on the 12th April 2022 and noted that whilst the scheme would be similar to that previously refused by both the Council and the Board, amendments had been undertaken to overcome the reasons for refusal. These amendments concern unit mix, communal amenity space provision, private amenity space provision, and cycle parking. The report agrees the acceptability of the development in terms of height, scale and massing. The report confirms that the development would generally be in accordance with residential quality standards and would not have significant impacts on the amenity of surrounding properties.
- 3.2.2. On the issue of drainage and flood risk, the report notes that the development would be located within a defended high-risk flood zone and that highly vulnerable development would be proposed at ground floor level. The proposed finished floor levels would not comply with the requirements for highly vulnerable development, as outlined in the DCC Strategic Flood Risk Assessment (SFRA). On this basis, the Council issued a request for further information on the 12th April 2022. The developer was requested to demonstrate how the development complies with the requirements of the SFRA, with an additional requirement that they consult with the DCC Flood Defence Unit and the Drainage Division prior to the submission of further information.

- 3.2.3. Further information was submitted by the developer and received by DCC on the 11th October 2022. This included amended plans that would change the proposed use of the ground floor from residential use to a medical centre. The medical centre would include five consultancy rooms, a nurses room, office/reception, patient waiting area and backroom spaces. Elevational amendments were submitted for the ground floor level to take account of the newly proposed use. The further information submission would result in a reduction of four residential units, with the new mix being 1 No. studio apartment, 4 No. one bedroom units, 1 No. two bedroom (three person) unit, and 3 No. two bedroom (four person) units.
- 3.2.4. An updated report was then issued by the Deputy Planning Officer on the 7th November 2022, outlining that this information satisfactorily addressed the flood risk concerns by proposing a less vulnerable use at ground floor. The report states that the proposed development, overall, would be unlikely to have an undue negative impact on the amenities of existing properties and is considered to be acceptable, subject to conditions.
- 3.2.5. However, the Council considered that the amendments would constitute significant further information which would require re-advertisement and that this could not be dealt with as the application was then outside of the six month statutory period. Additionally, the Transport Planning Division required clarification on the further information, but this was not possible within the statutory time period. On this basis, the Council applied Condition 4 to omit the ground floor residential use from the development and make any subsequent use of the ground floor subject to a separate planning application.
- 3.2.6. **Other Technical Reports**
- 3.2.7. **Drainage Division (02.03.2022):** Recommend seeking additional information on the basis that the development would be located within a defended high-risk flood zone and that highly vulnerable development would be proposed at ground floor level. The proposed finished floor levels would not comply with the requirements for highly vulnerable development. The Drainage Division considered the additional information on the 1st November 2022 and considered it to be acceptable subject to conditions.
- 3.2.8. **Transport Planning Division (29.03.2022):** Initially, the Transport Planning Division responded to the application confirming there were no objections, subject to

conditions. The Transport Planning Division were then consulted on the further information submitted at the request of the Planning Authority.

- 3.2.9. **Transport Planning Division (25.10.2022):** Recommended that 'clarification of further information' be requested with regards to the access, parking, servicing, and operational demands of the medical centre, including information on existing car parking capacity. A request was also made to increase the width of the access to both cycle parking stores to be at least 1400mm.

3.3. Prescribed Bodies

- 3.3.1. **Iarnród Éireann (IE) (04.03.2022):** The Railway Safety Act 2005 requires that there must be no increase in risk to the railway as a result of the proposed works and that this must be taken into account in terms of design, construction and operation of the proposed development.
- 3.3.2. IE note that the railway operates 24 hours a day and the development must consider potential noise and vibration impacts. Advises that the applicant must refer to the local Authority's Noise Action Plan and carry out a Noise Risk Assessment to inform an Acoustic Design Statement.
- 3.3.3. **Irish Water (IW):** No response.
- 3.3.4. **National Transport Authority (NTA):** No response.
- 3.3.5. **Transport Infrastructure Ireland (TII) (11.03.2022):** The proposed development is within an area that is subject to a Section 49 Supplementary Development Contribution Scheme – Luas Red Line Docklands Extension.

3.4. Third Party Observations

- 3.4.1. An observation was received from Martin McArdle of 69 Church Road, Dublin 3. The observation raised the following points:
- The height of the proposed development is too high and not in keeping with the height of buildings in the area.
 - The development would impact on light to 69 Church Road, especially in winter.

- There would be overlooking impacts at 69 Church Road and other properties in the area.
- There is very little on-street parking at the property and the proposed development would make this worse by not providing car parking.
- Traffic surveys were undertaken during the pandemic, when very few people were in offices.
- Demolition and construction would cause massive disruption to residents, many of whom are elderly and in poor health. Long periods of noise disturbance could lead to further deterioration of health.

3.4.2. An observation was received from Steve O'Connor (third party appellant) of 169 Church Road, Dublin 3. The main points of this observation are similar to those made on the appeal and are set out in paragraph 6.2.1 below.

4.0 Planning History

- 4.1.1. The appeal site has been the subject of two previous applications for similar development:
- 4.1.2. **Planning Authority Reference 2675/21:** The proposal was for the demolition of the existing buildings and redevelopment to provide 13 flatted dwellings in a building up to four storeys in height. This application was deemed to be withdrawn on 12th January 2022 following the failure of the applicant to comply with a request for further information within the statutory six month period. The request for further information placed a requirement on the developer to demonstrate how the development would comply with the requirements of the Strategic Flood Risk Assessment in light of a highly vulnerable use (residential) being proposed at ground floor level. The issues raised in this case are similar to those of the appeal scheme, including the request for further information.
- 4.1.3. **ABP Ref 307987-20 / Planning Authority Reference 2773/20:** The proposal was for the demolition of the existing buildings on site and redevelopment to provide 13 flatted dwellings in a building up to four storeys in height. Permission was refused by the Board in February 2021. The Board accepted the scale, height and massing of the

development, however there were concerns regarding the number and quality of units. The reason for refusal reads as follows:

Having regard to the restricted size of the site, it is considered that the proposed development represents an overdevelopment of the site by reason of an excessive number of apartment units, in particular of units with a single aspect facing generally north, which, in conjunction with the absence of communal open space and a minimal provision of other facilities within the proposed development, would result in a substandard level of amenity and services for future residents. The proposed development would, therefore, seriously injure the residential amenities of the area, would represent overdevelopment of the site, and would not be in accordance with the proper planning and sustainable development of the area.

- 4.1.4. It should be noted that the Council's Drainage Division requested further information for similar reasons to the current appeal scheme and the subsequently withdrawn 2021 scheme. A formal request for further information was not made in this instance due to the substantive reasons for refusal.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The Dublin City Development Plan 2022 – 2028 (CDP), categorises the site as zone 'Z1 – Sustainable Residential Neighbourhoods'. The stated objective for these areas is 'to protect, provide and improve residential amenities.'. The houses on Blythe Avenue, which adjoin the site to the east, are zoned Z2 – Residential Neighbourhoods (Conservation Areas).
- 5.1.2. Chapter 3: Climate Action, contains the Council's policies and objectives for addressing the challenges of climate change through mitigation and adaptation. The relevant policy from this section is:

- CA3: Climate Resilient Settlement patterns, Urban Forms and Mobility

5.1.3. Chapter 4: Shape and Structure of the City, sets out the Council's strategy to guide the future sustainable development of the city. The objective is to ensure that growth is directed to, and prioritised in, the right locations to enable continued targeted investment in infrastructure and services and the optimal use of public transport. The relevant policies from this section are:

- SC1: Consolidation of the Inner City
- SC5: Urban Design and Architectural Principles
- SC10: Urban Density
- SC11: Compact Growth
- SC12: Housing Mix
- SC20: Urban Design

5.1.4. Chapter 5: Quality Housing and Sustainable Neighbourhoods, seeks the provision of quality, adaptable homes in sustainable locations that meet the needs of communities and the changing dynamics of the city. The delivery of quality homes and sustainable communities in the compact city is a key issue for citizens and ensuring that Dublin remains competitive as a place to live and invest in. The relevant policies from this chapter are:

- QHSN6: Urban Consolidation
- QHSN10: Urban Density
- QHSN22: Adaptable and Flexible Housing
- QHSN36: High Quality Apartment Development
- QHSN37: Homes and Apartments
- QHSN38: Housing and Apartment Mix

5.1.5. Chapter 8: Sustainable Movement and Transport, seeks to promote ease of movement within and around the city and an increased shift towards sustainable modes of travel and an increased focus on public realm and healthy placemaking, while tackling congestion and reducing transport related CO2 emissions. The relevant policies of this section include:

- SMT25: On-street Parking
- SMT27: Car Parking in Residential and Mixed Use Developments

5.1.6. Chapter 9: Sustainable Environmental Infrastructure and Flood Risk, aims to address a broad range of supporting infrastructure and services including water, waste, energy, digital connectivity and flood risk/surface water management. The relevant policies of this section are:

- SI14: Strategic Flood Risk Assessment
- SI15: Site Specific Flood Risk Assessment

5.1.7. Chapter 15: Development Standards, contains the Council's Development Management policies and criteria to be considered in the development management process so that development proposals can be assessed both in terms of how they contribute to the achievement of the core strategy and related policies and objectives. Section 15.9: Apartment Standards, is applicable as a whole and sets out the relevant requirements and objectives for new apartment developments, covering relevant issues such as residential amenity, quality of accommodation, amenity space, and design. Further relevant sections of Chapter 15 include:

- 15.15.2.2: Conservation Areas
- 15.18.14: Flood Risk Management

5.2. **Regional Policy**

Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031

5.2.1. This strategy provides a framework for development at regional level. The RSES promotes the regeneration of our cities, towns, and villages by making better use of under-used land and buildings within the existing built-up urban footprint.

5.3. **National Policy**

The National Planning Framework - Project Ireland 2040

5.3.1. The government published the National Planning Framework (NPF) in February 2018. Objective 3a is to deliver 40% of all new homes nationally, within the built-up footprint of existing settlements. Objective 11 is to prioritise development that can encourage more people to live or work in existing settlements. Objective 35 is to increase residential density in settlements.

5.4. Ministerial Guidelines

- 5.4.1. The following Ministerial Guidelines are of relevance:
- 5.4.2. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2022).
- 5.4.3. Urban Development and Building Height: Guidelines for Planning Authorities (2018).

5.5. Natural Heritage Designations

- 5.5.1. The proposed development is not located within or immediately adjacent to any European site. The nearest European sites are the South Dublin Bay and River Tolka Estuary SPA (004024), South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), and the North Bull Island SPA (004006).

5.6. EIA Screening

- 5.6.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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. First Party Grounds of Appeal

- 6.1.1. An appeal has been lodged by Downey Chartered Town Planners of 29 Merrion Square, Dublin 2, on behalf of EWD3 Developments Ltd., against Condition 4 of the planning permission. The grounds of appeal can be summarised as follows:
 - Further consultation was undertaken with the DCC Drainage Department and the Flood Defence Unit during the further information period.
 - A residential use at ground floor is not appropriate and a commercial use should be on the ground floor. A medical centre was determined to be the most appropriate use, given the lack of facilities in the area.

- A medical centre is compliant with policy and there is high demand for medical facilities in the area due to the uplift in population because of new homes under construction.
- Removal of Condition 4 would allow the timely delivery of the medical centre.
- There are several precedent applications for residential development with ground floor commercial use (some including medical centres). The appeal proposal is of a similar nature to these and should be granted without the condition.

6.2. Third Party Grounds of Appeal

6.2.1. An appeal has been lodged by Steve O'Connor of 167 Church Road, Dublin 3, against the decision of Dublin City Council to grant permission for the proposed development. The grounds of appeal include 26 addresses of local residents who agree with the comments made in the grounds of appeal. The grounds of appeal are as follows:

- The application has been refused three times by the Council and once by the Board. Nothing has changed.
- The applicant has made a false declaration on the application form by answering 'No' to any knowledge of previous floods.
- Would dispute that site notices were in place on the date the site inspection took place.
- The CGI images are inaccurate.
- The proposed change of use of the ground floor was deemed to be significant and the applicant would be required to re-advertise the proposal. The applicant should have to reapply for permission so that people can see what they are planning to build and raise their concerns/observations.
- The Council couldn't request clarification of the further information as they were out of time. How can permission be granted if the Planning Authority still needed clarification?
- The proposal would result in a loss of value to 167 Church Road.

- There would be adverse impacts on neighbouring amenity due to overshadowing, loss of light, loss of privacy and the overbearing nature of the development.
- Noise and disruption would have an impact on pensioners and young families which make up the main proportion of local residents.
- Vibrations, drilling and excavation could undermine the structure and foundations of surrounding houses.
- A four storey development is out of scale and proportion and would not blend in with the area. The proposal would be overdevelopment due to its height, depth and scale.
- The ground floor is to be built from plans that are meant for residential apartments and not commercial use.
- No car parking is proposed despite a need for car parking in the area. Other developments in the area have provided car parking.
- Construction and traffic would lead to safety impacts on what is already a dangerous junction.
- The development would not provide enough cycle parking.
- The development would result in increased traffic.
- The frequency and proximity of public transport in the Transport Statement is wrong.
- No information on bin storage/collection is provided and it would not be safe to leave bins at a dangerous junction.
- The development would put a strain on water and drainage infrastructure.
- There is a concern that construction debris could block drains and lead to more flooding.
- The Appropriate Assessment Screening Report is inaccurate as it relates to a scheme on Howth Road.

6.3. Applicant Response

6.3.1. The applicant's response to the third party appeal is summarised below:

- Site notices were posted on three locations at the site by Site Notice Ireland on the 15th February 2023, and remained in place throughout the consultation period and on the date the site was inspected by DCC. The notice board referred to by the appellant was not used for this application and notices were instead posted on the Blythe Avenue frontage, one opposite Malachi Place and one at the main entrance to the building, on Church Road.
- Condition 4 requires a separate application for the ground floor. In applying this condition, DCC rightly recognised the need for consultation with 3rd parties on the proposed change from residential.
- The site is located on a prominent junction and the appropriately scaled building would enhance the streetscape and reinforce the sense of place. An Bord Pleanála stated in their previous report that a four storey building was appropriate, would not visually detract from the vicinity and would improve the vista down Church Road.
- The development would enhance the design quality of the area and positively contribute to the sense of place, bringing added value to the area.
- The provision of no car parking is considered appropriate given the highly sustainable locational characteristics of the site and the national shift towards more sustainable modes of transport.
- The scheme is appropriately distanced from neighbours to ensure there would be no overlooking. Placement of the openings and balconies does not adversely impact on the privacy of adjoining properties.
- A Daylight and Sunlight Assessment was submitted with the application.
- A Construction Management Plan was submitted with the application, and this ensures that a Traffic Management Plan would be discussed and agreed with the Planning Authority.
- Noisy activities would be restricted to site working hours, to reduce noise to adjoining occupiers. Noise control and monitoring would be in place.

- Every effort would be made to control and limit emissions of gases and particulate pollutants from construction and demolition activities on site, including from vehicles and plant.
- Roads would be kept free of dust as far as possible and would be swept regularly. Roads would be kept clear of muck and other debris, with a road sweeping truck used if necessary.
- Due to the scale of the development and the separation distances to existing dwellings, no adverse impact on 167 Church Road is anticipated.
- The Traffic and Transport Statement has used Census Small Area data from 2016 as nationwide trends and figures are less likely to be applicable for a planning application of this scale, in a well established area.
- A total of 21.6sqm for bin storage would be provided at ground floor and a property management company would be engaged for the development. Grey, brown and green bins would be provided.
- Comments on the Appropriate Assessment Screening Report are in relation to a previous application and are not relevant to the appeal. This is also the case regarding comments on the supporting planning statement.

6.4. Planning Authority Response

- 6.4.1. DCC have responded to the appeal, requesting that the Board uphold the Council's decision and apply conditions relating to Section 48 and 49 contributions, payment of a bond and a condition to secure social housing.

6.5. Observations

- 6.5.1. None.

6.6. Further Responses

- 6.6.1. None.

7.0 Assessment

7.1. I have read the entire contents of the file, visited the subject site and the surrounding area and have had particular regard to the issues raised in both the first and third party appeals. I consider it appropriate to evaluate the proposed development in the context of (a) the issues raised in the third party appeal and if it is determined that the development is acceptable, (b) the appropriateness of attaching Condition No. 4 of the Planning Authority's grant of planning permission. The issues raised will be addressed under the headings below.

- Procedural Matters
- Amenity
- Design, Scale and Massing
- Transport and Traffic
- Drainage
- Devaluation of Property
- Grounds of First Party Appeal
- Appropriate Assessment

7.2. Procedural Matters

7.2.1. The third party appellant has raised several issues that can be grouped together under procedural matters. Firstly, there is the matter of repeat applications and the inferred concern that this is an attempt by the applicant to obtain consent without making substantive changes to the development. There is no limit to the number of times an application for planning permission can be made, although the Planning Authority does have the power to decline to determine an application if there has been no significant change since the previous application, within a two year period. I would note that there are changes between the initial refused application and the current appeal scheme and that these changes seek to address the previous reasons for refusal. Therefore, I do not consider the submission to be a spurious application.

- 7.2.2. The appellant argues that site notices were not present on the site at the time of the DCC inspection. In terms of procedural matters and the alleged irregularities of the nature and timing of the erection of the site notices, I note that both matters were considered acceptable by the planning authority. I am satisfied that this did not prevent the concerned party from making representations. I accept that the site notices were not posted on the notice board used on previous applications, however, the three locations used for the site notices on the appeal scheme are entirely appropriate, accessible, and visible.
- 7.2.3. Concerns are raised that the applicant made a false declaration on the application form by answering 'No' to any knowledge of previous floods, despite there being clear evidence of flooding from 2022. I have reviewed the information on file and note that the flooding issues are set out in the supporting documentation. Additionally, flood and drainage issues have been raised by the Council on all of the previous applications.
- 7.2.4. It is unclear why the Planning Authority did not opt to invalidate the application pursuant to Article 26(3)(a) of the Regulations. The Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of an application. Procedural matters are generally the responsibility of the Planning Authority.
- 7.2.5. The flooding issues are clearly expressed in the supporting documentation and flooding/drainage has been a core issue on the appeal scheme and the previous application. On that basis, whilst it is unfortunate that the application form was not corrected at the time of validation, I do not consider that it has prejudiced the outcome of the application or the ability of third parties and other consultees to fully engage in the process.
- 7.2.6. The appellant has raised the matter of public consultation in relation to the further information submitted as part of the application. The core issue is that DCC considered this information to be significant, therefore requiring re-advertisement. The appellant considers that the applicant should have to reapply for permission so that people can understand what they are planning to build and submit their observations. A further concern has been raised that the Council granted permission despite requiring clarification on the significant further information.

- 7.2.7. The Planning Authority requested further information, which was complied with by the applicant within the statutory six month period. This information related to providing a less vulnerable use at ground floor level, to overcome flood risk concerns. In this case, a change from residential to a non-residential use. The Council determined that the further information required clarification on transport grounds and deemed the overall change of use to be significant information that required readvertisement. The statutory six month period had expired by the time the Council assessed the further information. Consequently, the Council opted to secure the provision of a less vulnerable use on the ground floor by the imposition of Condition 4, which sought to omit the residential use of the ground floor and secure an alternative use of this space via a separate planning application.
- 7.2.8. On the matter of seeking clarification of the further information, it is unclear why the Council did not seek to agree an extension to the six month period, as allowed under Article 33(3) of the Regulations. In any event, I would agree that the information submitted is significant and would require re-advertisement. On this basis, Condition 4 requires the use of the ground floor of the building to be the subject of a future application, this would allow a new public consultation to take place and allow full clarification of any matters in relation to the future proposed use.
- 7.2.9. The final procedural matter raised by the third party appellant is that the CGI's are inaccurate. I consider that CGI's are indicative images intended for information only, as opposed to the plans and elevations on which a planning assessment is based, and minor discrepancies in the CGI's are not significant material issues on a scheme of this size.

7.3. **Amenity**

- 7.3.1. Concerns have been raised by the appellant that the development would have an adverse impact on residential amenity as a result of overshadowing, loss of light, loss of privacy and overbearance.
- 7.3.2. I have considered the Daylight and Sunlight Assessment which demonstrates that none of the adjacent dwellings or garden ground would be adversely affected by the proposal in terms of a loss of daylight or sunlight. All daylight changes would be in line with the standards set out in the BRE guidance. This is acceptable.

- 7.3.3. In terms of overlooking, the separation distances between the proposed development and Nos. 69, 70 and 167 Church Road are considered acceptable and reflective of the existing streetscape relationship between opposing dwellings. The dwelling at 45 Blythe Avenue occupies the entirety of its plot and would be protected from both perceived and actual overlooking by way of privacy screens (for the proposed communal amenity space) and the absence of directly opposing windows. I do not consider there to be any significant privacy or overlooking issues.
- 7.3.4. The proposed building would step down towards the adjoining dwellings and there is sufficient distance between the proposed building and adjacent dwellings to ensure the development would not be overbearing.
- 7.3.5. The appellant argues that the development would cause disruption and that there would be noise impacts. These issues would largely be confined to the demolition and construction phase of the development, and I am satisfied that they could be adequately mitigated by way of appropriately worded planning conditions, should the Board decide to grant permission.
- 7.3.6. The potential for vibrations, drilling and digging to undermine the structure and foundations of surrounding houses has also been raised as a concern by the appellant. I consider that construction impacts can be mitigated by way of a Construction Environmental Management Plan condition, which I would advise the Board to apply should permission be granted. The potential impact of a development on the structure of an adjoining/nearby premises is a civil matter to be resolved between the parties, having regard to the provisions of S.34(13) of the Planning and Development Act 2000.

7.4. Design, Scale and Massing

- 7.4.1. The grounds of appeal raise concerns that the proposal would be overdevelopment due its height, scale, and massing. Further concerns are raised that the ground floor would be built from plans that are meant for residential apartments and not commercial use.
- 7.4.2. The height, scale and massing were previously considered to be acceptable by the Board and there has been no material change with regards to those matters. I agree that the provision of a four storey building at this location would be acceptable, and positioning the four storey element on the corner and stepping down towards the existing dwellings is appropriate in urban design terms.

- 7.4.3. The matter of overdevelopment formed the basis of the Board's previous refusal on this site. However, it is important to note that overdevelopment in that instance was generally related to the development providing an excessive number of apartment units, an excessive number of single aspect north facing units and the absence of communal open space.
- 7.4.4. It is noted that, as originally proposed, the development continued to propose 13 apartments and as such would fail to overcome the Boards previous objection to the total number of apartments. However, by virtue of Condition 4 omitting residential use at ground floor level, the total number of apartments would be reduced to nine, which I consider to be a suitable reduction in the context of the Boards previous decision.
- 7.4.5. The percentage of dual aspect units would increase from 31% on the previously refused appeal to 61% on the current appeal scheme, which would exceed the Council's minimum standards. Furthermore, there would be no north facing single aspect units. I consider this to have suitably dealt with the Boards previous concerns regarding dual aspect units.
- 7.4.6. The previously refused appeal scheme failed to provide any communal amenity space, whereas the current appeal scheme would provide approximately 73sqm of communal amenity space in the form of a roof terrace at second floor level. This is considered acceptable due to the particular site constraints and circumstances. Overall, I consider the overdevelopment issues on the previously refused appeal to have been adequately addressed as part of the current appeal scheme.
- 7.4.7. I note the appellant's concern that the base of the building has been designed for residential use and not commercial use, however I consider that there would be no significant impediment to adapting the ground floor for non-residential use.

7.5. Transport and Traffic

- 7.5.1. The development would not provide any car parking, and this has been raised as a concern by the appellant due to the impact it would have on local parking pressure. At the time of my inspection the streets surrounding the appeal site were lightly to moderately parked. However, I am aware of the fact that this was mid-afternoon on a working day, and as such does not reflect the parking situation in the evenings and mornings when most residents would be at home.

- 7.5.2. Notwithstanding, this is a fairly central location in the inner city, with nearby bus routes (Nos. 53 and 151), within walking distance to a Luas station and a major employment area. Given the connected nature of the site and its central location, I do not consider it unreasonable to propose zero car parking for the residential element of the development.
- 7.5.3. The applicant proposed a medical centre in their further information submission. The Council's Transport Planning Division sought clarification of this information with regards to access, parking, servicing, and the operational demands of the medical centre, including information on existing car parking capacity. These transport issues were not clarified, nor was the proposal readvertised as required, due to the expiration of the statutory six month period. The proposed change of use of the ground floor specifically to a medical centre was therefore not incorporated into the permission issued by DCC, which seeks a non -residential use at ground floor and is not specific to a medical centre.
- 7.5.4. The Board is being asked to consider a development whereby the final use of the ground floor is reserved by condition, rather than the acceptability of a medical centre. Assessment of the ground floor as a medical centre therefore sits outside the scope of this appeal, and consideration of it would be prejudicial to public consultation as would be required under the future application secured as part of Condition 4. However, I consider that the Council should be mindful of the parking requirements for a medical centre in any future application, whereby in my opinion, an accessible parking space should be provided as a minimum.
- 7.5.5. Further issues raised by the appellant relate to construction works and associated traffic impacting on safety, an increase in traffic as a result of the proposed development and the failure of the development to provide enough cycle parking. As mentioned previously, impacts during the construction period can be adequately dealt with by condition. Having reviewed the Traffic and Transportation Statement submitted with the application, I do not consider that the development would have a significant impact on traffic generation in the local area. Finally, the provision of cycle parking is well in excess of the minimum standards and is acceptable in terms of its form, location and access.

7.5.6. The appellant states that the frequency and proximity of public transport in the Transport Statement is incorrect. The issues presented by the appellant with regards to walking times are subjective and do not change my conclusions on the transport related matters above. Additional concerns are expressed that no information on bin storage/collection is provided and that it would not be safe to leave bins at a dangerous junction. The plans show sufficient, accessible bin storage areas and a bin collection contract would be secured for the building.

7.6. Drainage

7.6.1. The grounds of appeal state that the development would put a strain on water and drainage infrastructure. Additionally, there is a concern that construction debris could block drains and lead to more flooding. Irish Water were consulted on the application, but no response was received. I note from the previous appeal file that Irish Water provided a letter to the applicant stating that a connection to the Irish Water network could be facilitated and I see no reason why this wouldn't be the case on the current appeal scheme.

7.6.2. I am satisfied that the Construction Environmental Management Plan condition would be suitable to ensure that roads and paths would be kept free of dust, dirt and debris during the construction phase and that there would be minimal impact on the drainage network as a result of the construction works.

7.7. Devaluation of Property

7.7.1. I note the concerns raised in the third party grounds of appeal in respect of the devaluation of the property at 167 Church Road. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

7.8. Grounds of First Party Appeal

7.8.1. The first party appeal specifically requests that the Board remove Condition 4. It is considered that the Board can restrict its deliberations to this issue only.

7.8.2. The grounds of appeal consider that Condition 4 should be removed on the basis that a medical centre would be policy compliant, it would be in high demand due to population uplift, it would be an appropriate use at ground floor, it has been the subject

of consultation with various DCC departments, and that there are several precedent developments that support this use. The grounds of appeal state that the removal of the condition would allow the timely delivery of the medical centre.

- 7.8.3. The core issue in the determination of the first party appeal is not the acceptability of a medical centre on this site but that of public consultation and engagement. I consider the change of use of the entire ground floor of the proposed building from residential to a medical centre or other non-residential use to be a significant material alteration to the originally proposed development. Whilst the proposed elevational amendments are minor and acceptable in the context of the overall scheme, the change of use from residential fundamentally changes the scope and character of the development and its relationship to its surroundings from that originally advertised.
- 7.8.4. The principle of a non-residential use at ground floor is acceptable, subject to compliance with the zoning objectives for the area and relevant CDP policies. However, the removal of Condition 4 would serve to bypass the statutory consultation process and would prevent local stakeholders from engaging in the process. There may be local residents who chose not to comment on the original planning application because it was solely residential in nature who may have different views on non-residential uses.
- 7.8.5. The applicant themselves recognise this in their response to the third party grounds of appeal, where they state in relation to the concern that third parties could not give their view on the further information proposals, *‘Dublin City Council have rightly recognised that very issue and have implemented this condition so as to enable any 3rd party views on the use of such ground floor space’*.
- 7.8.6. It’s questionable that the applicant would support the provision of this condition in response to the third party appeal, whilst simultaneously seeking its removal. In any event, I am satisfied that the condition should remain, albeit with amended wording requiring the application to be agreed prior to the commencement of development on the parent consent. I consider this amendment to be necessary to ensure the proposed use is fully incorporated into the design of the building and in order to minimise the risk of long term vacancy of the ground floor. In the interests of clarity, I propose a further amendment to the condition to make it clear that the future proposed use should be a less vulnerable non-residential use. I consider the application of this condition to be

necessary to enable appropriate consideration of the proposed future use of the ground floor by the public and the Planning Authority. Should the Board decide to grant permission, I would advise that the development description be amended to clarify the approved number of residential units as nine to reflect the reality of Condition 4 removing residential use from the ground floor.

7.9. Appropriate Assessment

- 7.9.1. I am aware of the concerns raised by the appellant that there are inaccuracies in the Appropriate Assessment Screening Report, but I note that these comments appear to be in relation to the previous appeal and that an updated Appropriate Assessment Screening Report has been submitted for the current appeal scheme (dated February 2022).
- 7.9.2. The proposal comprises a small scale residential development with an as yet undetermined non-residential use at ground floor level, secured by condition. The site is brownfield in nature and fully occupied by the existing buildings. All areas of the site and the immediate surrounding area are either developed or hardstanding.
- 7.9.3. The nearest European Sites are the South Dublin Bay and River Tolka Estuary SPA (004024) which is approximately 0.95km to the north east and the South Dublin Bay SAC (000210) which is approximately 2.5km to the south east. There are several other European Sites in the wider Dublin Bay area to the east, including North Bull Island SPA and North Dublin Bay SAC. The site is not, therefore, located within or adjoining any European Sites, and there are no direct pathways between the site and the European Site network.
- 7.9.4. I am aware that there are potential indirect connections to the European Sites within Dublin Bay via watercourses and the wider drainage network. There is also an indirect connection via the wastewater network which outfalls to Dublin Bay via the Ringsend Waste Water Treatment Plant. However, the existence of these potential pathways does not necessarily mean that potential significant impacts will arise.
- 7.9.5. There are no surface watercourses in the immediate vicinity of the site that would provide a pathway to the European Site network. I note that surface water will be treated on-site in accordance with an appropriate SUDS design before discharge to the public network. Foul water would be disposed to the main public sewer. Whilst this would result in an increased loading on the Ringsend WWTP, the scale of the

development is minor in context. Therefore, having regard to the limited scale of the development, the absence of any hydrological pathways, the dilution capacity of Dublin Bay and the insignificant additional loading on the Ringsend WWTP, I am satisfied that there is no potential for the development to result in significant effects on European Sites within Dublin Bay.

7.9.6. I am satisfied that any proposals incorporated within the development, including surface water management proposals, constitute standard best practice and that no mitigation measures are relied upon for Appropriate Assessment screening. Having regard to the above, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

8.0 Recommendation

8.1. From my assessment above, I consider that the Board should uphold the decision of the Planning Authority and grant planning permission for the proposed development with the inclusion of an amended Condition 4, based on the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Having regard to the Z1 zoning objective relating to the site and the nature and extent of the proposed development, it is considered that the proposal, subject to the conditions set out below, would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health or the environment and would generally be acceptable in terms of design, traffic safety and convenience.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application [as amended by the further plans and particulars submitted on the 11 day of October 2022], except as may otherwise be required in order to comply with the following conditions.
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	<p>Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication antennas, shall be erected at roof level other than those shown on the plans and particulars lodged with the application. All equipment such as extraction ventilation systems and refrigerator condenser units shall be insulated and positioned so as not to cause noise, odour or nuisance at sensitive locations.</p> <p>Reason: In the interests of visual and residential amenities.</p>
4.	<p>No development shall take place until a separate planning application for the ground floor use has been submitted to and agreed by the Planning Authority. The future ground floor use shall be a less vulnerable, non-residential use.</p> <p>Reason: In the interests of clarity and orderly development.</p>
5.	<p>a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p>

	<p>(b) The plan shall provide for screened communal bin stores, which shall be adequately ventilated, drained and illuminated. The design and location of same shall be included in the details to be submitted.</p> <p>Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage</p>
6.	<p>(a) During the construction and demolition phases, the proposed development shall comply with British Standard 5228 ' Noise Control on Construction and open sites Part 1. Code of practice for basic information and procedures for noise control.' (b) Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. In particular, the rated noise levels from the proposed development shall not constitute reasonable grounds for complaint as provided for in B.S. 4142. Method for rating industrial noise affecting mixed residential and industrial areas.</p> <p>Reason: In order to ensure a satisfactory standard of development, in the interests of residential amenity.</p>
7.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
8.	<p>Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.</p>

	<p>Reason: In the interest of residential amenities of surrounding properties and in the interest of clarity.</p>
10.	<p>The site development and construction works shall be carried out in such a manner so as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.</p> <p>Reason: To ensure that the adjoining roadways are kept in a clean and safe conditions during construction works in the interest of orderly development.</p>
11.	<p>The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide inter alia: details and location of proposed construction compounds, details of intended construction practice for the development, including hours of working, noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
12.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p>

	<p>Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
13.	<p>The developer shall pay to the planning authority a financial contribution in respect of the extension of Luas Line C1 – Docklands, in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>
14.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p>

	<p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
15.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>
16.	<p>The Development shall comply with the following requirements of Irish Rail:</p> <p>a) The Railway Safety Act 2005 places an obligation on all persons carrying out any works on or near the railway to ensure that there is no increase in risk to the railway as a consequence of these works. Because of the proximity of the site to the Railway, the Developer must take into account this obligation in Design, Construction and Operation of the scheme.</p> <p>b) The railway operates 24 hours a day with maintenance activity taking place at night and during shut downs of passenger services. The development is in close proximity to the live railway and therefore must take account of the potential noise and vibration impact that an operational railway may have on sensitive receptors. Residential units should be designed, orientated and located to limit the impacts of noise and vibration from transportation traffic and maintenance activities. It is recommended that the Applicant incorporates best practice principles in the design using BS8233 - Guidance on Sound Insulation and Noise Reduction for Buildings. The Applicant must refer to the local authority's Noise Action Plan regarding development adjacent railways and where appropriate carry</p>

	<p>out a noise risk assessment to inform an Acoustic Design Statement (ADS). The detail of the ADS should be commensurate with the level of risk identified in the noise risk assessment. The Applicant must take responsibility for specifying necessary mitigation measures where noise thresholds are expected to be exceeded. The noise assessment should consider a number of scenarios, including the following:</p> <ul style="list-style-type: none">• within the development with windows closed;• within the development with windows open; and• exterior of development within private or communal gardens <p>Reason: In the interests of safety in operation of the railway</p>
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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.

Terence McLellan
Senior Planning Inspector

2 August 2023