



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315314-22

#### Development

Planning permission is sought for the demolition of all existing buildings on site (1,316-sq.m. gross floor area) and the construction of a mixed-use retail, commercial and residential development totalling 9,177-sq.m. gross floor area. The residential development component of this proposed development contains 60 apartments. All associated site works and services.

#### Location

Site (0.45 ha) at lands known as 'Bright Ford Rialto', Herberton Road, Dublin 12, D12 HT99.

#### Planning Authority

Dublin City Council South.

#### Planning Authority Reg. Ref.

3930/22.

#### Applicant(s)

Lidl Ireland.

#### Type of Application

Planning Permission.

#### Planning Authority Decision

Grant with conditions.

**Type of Appeal**

First & Third-Party Appeal.

**Appellant(s)**

1. Lidl Ireland GmbH.
2. Residents of Herberton Road:
  - Adrienne Duffy & Michael Connolly.
  - Charles Foster.
  - Aisling O'Sullivan.
  - Bernary Fahy.
  - Ronan & Beatriz Corley.
  - Marie O'Sullivan.
  - Tomas Lyne.
  - Moira Lyne.
  - Moira Lyne Jnr.
  - Graeme Lawless and Bryan Sexton.
  - Rachel Smith.
  - Niamh Gleeson & Moira Scott.
  - Olivia Barrett & Thomas Hanlon.

**Observer(s)**

Niall Hurley.

**Date of Site Inspection**

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

**Inspector**

Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. 'Bright Ford Rialto', the irregular shaped appeal site has a given site area of 0.45ha and it is located on the western side of Herberton Road, circa 87m to the south of its junction with Dolphin Road (R111) and circa 220m to the north east of its junction with the Crumlin Road (R110), in the inner city suburb of Crumlin, which is situated circa 3.5km to the south west of Dublin's city centre.
- 1.2. At the time of inspection, the site was in use as a car sales showroom and forecourt with a centrally positioned main entrance on its curving in alignment roadside boundary. On either side of this entrance the roadside boundary is demarcated by metal fencing sitting on a concrete base. Double yellow lines run alongside the pedestrian footpath that adjoins this boundary and there is a bus stop located to the south of the entrance (Note: Bus Stop No. 7439).
- 1.3. The site contains a sales room and service commercial warehouse building associated with the car sales operating from this site. This has a two-storey built form and its façade addressing Herberton Road is mainly glazed. This building is located on the southern side of the site. Along the western rear boundary of the site there is a single storey outbuilding that is also in use as part of the car sales operation at this site. The remainder of the site is covered in hardstand for the parking and storage of mainly cars.
- 1.4. On the adjoining public domain in the vicinity of the north easternmost corner of the site there is a high-quality mature street tree. This lies in proximity to the second vehicle access serving the site which is located towards the northernmost end of the site boundary that runs alongside Herberton Road.
- 1.5. Adjoining most of the north and part of the west boundaries of the site is Glenview Industrial Estate. The buildings within this adjoining estate are characteristically light industrial/warehouse type buildings of mainly two storey height like the main building on site. On the neighbouring site to the east there is also a brick three storey element of the vacant G4S site addressing Herberton Road. In addition, on the eastern most end of the northern boundary there is a vehicle access serving an electrical sales business that operates from a light industrial building which is located to the immediate north of the site. This access also runs alongside the southern site boundary of a circa mid twentieth century detached two storey building with attached single storey garage

structure on its western side (Note: No. 75a Herberton Road/ Thistle House). This property lies between the appeal site and the G4S vacant site to the north.

- 1.6. Adjoining the southern boundary is a period two storey semi-detached pair of dwellings with the immediately adjoining No. 45 Herberton Road containing a number of mature trees to the front and to the rear.
- 1.7. Herberton Road on its eastern side is characterised by two-storey semi-detached properties that date to circa the 1950s. These are setback from the public domain.
- 1.8. On the day of site inspection, I observed *ad hoc* on-street car parking along the eastern side of Herberton Road carriage edge as well as in the general vicinity of the site, including along Herberton Drive which serves a residential development that links to Dolphin Road (R111) to the east. The junction of Herberton Drive and Herberton Road lies c17m to the south east of the southernmost roadside boundary of the site with Dolphin Road situated c225m from this junction.
- 1.9. The surrounding area could be described as being an inner-city locality given its close proximity to the Grand Canal and being c3km as the bird would fly from O'Connell Bridge. In terms of land use the surrounding area is characterised by a mixture of warehouse, industrial, commercial, and residential and is an area that is in transition with this is reflected in the changed the zoning of the western side of Herberton Road's land use zoning in recent Development Plans from 'Z6' to 'Z10' which is detailed further in Section 5 of this report which sets out the Planning Context of the site. However, Herberton Road acts as a boundary of this transition with the land use on its eastern side and its land use zoning reflecting its established residential nature and function. In terms of public transport, the immediate area is served by a number of Dublin Bus Stops and the wider area includes light rail with the nearest light rail stop located at Saint James, Rialto, c550m by foot from the site's southernmost roadside point.

## 2.0 Proposed Development

### 2.1. Planning permission is sought for:

- Demolition of existing buildings on site (1,316-sq.m. gross floor area).
- Construction of a mixed-use retail/commercial and residential development. The proposed building is a 6-storey equivalent structure (4 floors of residential over

commercial) and would total 9,177-sq.m. gross floor area. It would comprise of a supermarket with ancillary off-licence and bakery and associated circulation, storage, staff accommodation, canteen, toilets, shower facilities, deliveries room and ESB substation totalling 2,811-sq.m. gross floor area (of which 1,463-sq.m. is net retail sales area), 3 no. ground floor independent retail/commercial units of 181-sq.m. including a mezzanine, 194-sq.m. and 82-sq.m. and 60 no. residential apartments on 4 levels (Levels 1M, 2, 3 and 4) comprising 30 no. one-bedroom units, 29 no. two-bed units and 1 no. three bed unit and all associated private amenity space, circulation, lift and stair cores and escape stairs. The supermarket component would be located at first floor level over an undercroft car park with access gained via travellators located in the entrance lobby at street level fronting onto Herberton Road.

- Provision of a communal amenity space in the form of a landscaped podium level courtyard (610-sq.m.) located at second floor level.
- Access to the apartment units is gained via 3 no. entrance points one of which is located on the north eastern corner of the building fronting Herberton Road, and two remaining entrances are located on the southern elevation addressing the new internal access road.
- The ground floor level includes ancillary residential accommodation including entrance lobbies, bin store and cycle stores and other ancillary uses.
- Vehicular access to serve the proposed development will be provided via a new entrance from Herberton Road located at the south eastern boundary of the site.
- The supermarket is serviced by an external delivery/service area and dock leveller located at the north western corner of the building.
- The development is serviced by a surface level undercroft car park containing 56 no. car parking spaces. 14 no. surface car parking spaces are provided on the internal access road. 128 no. cycle parking spaces are proposed within secure designated storage areas and surface cycle parking as part of the development.
- Permission is also sought for public lighting, signage, hard and soft landscaping, boundary treatment and all ancillary and associated site development works.

2.2. The **applicant's further information** response was received by the Planning Authority on the 24<sup>th</sup> day of October, 2022. The development now consists of the

construction of a mixed use building of 7,523-sq.m. gross floor area comprising of a Lidl supermarket, 3 no. retail/commercial units and 41 no. apartments over (Note: nett internal floor area of 4,074 sq.m./20 No. 1-Bed and 21 No. 2-Bed). In addition, the revised proposal removed one storey from the front and rear blocks reducing the overall height of the building from 20.2m to 17.35m. The pent house level setback from Herberton Road which formed part of the original proposal submitted has been retained but the building is a storey lower. The rear block (Block 2) has a reduced parapet height of 10.2m (in comparison to the 11m of the original design). The overall footpath addressing Herberton Road would be increased to 3.2m in width. The number of car parking spaces has been reduced to 54 car parking spaces with this provision including 4 No. EV charging spaces, 2 No. disabled spaces and 2 No. car sharing spaces). The number of bicycle spaces total 93 and 3 no. motorcycle spaces are also proposed. The resulting plot ratio is given as 2 and the site coverage is given as 64%. This submission is accompanied by but not limited to the following documentation:

- Cover Letter.
- Revised Schedule of Accommodation and Housing Quality Audit.
- Photomontages.
- Revised Landscaping Drawings.
- Revised Architectural Drawings.
- Revised Engineering Drawings.
- Daylight/Sunlight & Shadow Report.
- 'Transportation Response'.
- Operational Waste Management Plan.



## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. By order dated the 18<sup>th</sup> day of November, 2022, the Planning Authority issued a notification to **grant** planning permission subject to 23 no. conditions. Of note are the requirements of the following conditions:

Condition No. 2 reads:

*“A development contribution in the sum of €744,735.04 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council’s Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.*

*Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.”*

Condition No. 5 reads:

*“Prior of commencement of development the Applicant shall submit a Community and Social Infrastructure Audit. The use of the ground floor units indicated as Retail Unit No’s 2 and 3 shall be restricted to community and social uses unless otherwise agreed in writing with the Planning Authority.*

*Reason: To comply with permission regulations.”*

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| Condition No. 6:     | This requires the reduction in height of the Corporate Lidl Signage on the east elevation onto Herberton Road (Sign L.2) to 1.5m in height and width. It also requires the omission of signs L.5 and L.7. The stated reason for this is in the interest of visual and residential amenity.  |
| Condition No. 8:     | This deals with details of balcony balustrading.  |
| Condition No. 9:     | Restricts any further development at roof level.  |
| Condition No. 10:    | Places restrictions on signage.   |
| Condition No. 11/20: | Places restrictions on sound & noise.   |
| Condition No. 13:    | Sets out Part V/Social Housing requirements.  |
| Condition No. 15:    | The requirements of this condition overlap with Condition No. 5 above as it requires the written agreement of a Community and Social Audit as per the requirement of Condition No.5 and of the proposed signage for the units indicated as Retail Unit No's 1, 2 and 3 prior to the commencement of development. It also requires that the signage have regard to the Dublin City Council's Shopfront Guide 2001. The stated reason for this condition is in the interests of orderly development and visual amenity. |
| Condition No. 16:    | Sets out the Transportation Division's requirements.  |
| Condition No. 17:    | Sets out the Drainage Division's requirements.  |
| Condition No. 18:    | Sets out restrictions on noise and air.   |
| Condition No. 21:    | Requires Construction, Demolition and Waste Management Plan.  |

Condition No. 22:

Sets out Residential Waste requirements.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The **final Planning Officer's report** (Note: dated the 18<sup>th</sup> of November, 2022) is the basis of the Planning Authority's decision. This report included the following comments:

- In relation to addressing Item No. 1 of the further information it was considered that the reduction in height and increased setback of width from Herberton Road was acceptable.
- It was considered that the revisions including the separation distance were acceptable including that now proposed to the western boundary which together with the improvements in the façade treatment to this elevation would allow for a more appropriate transition with this adjoining site should it be redeveloped in future.
- In relation to Item No. 2, it was considered that the photomontages show a more appropriate transition of the proposed development in its setting.
- In relation to addressing Item No. 3 it was considered that the revised proposal shows that these condensers are now internally located under the undercroft.
- In relation to addressing Item No. 4 it was accepted that the revised Daylight, Sunlight and Shadow report would give rise to no significant impact on adjoining residential development to the south.
- In relation to addressing Item No. 5 it was considered that the lack of omission of the second sign on Herberton Road is still a concern as are signs labelled 'L5' and 'L7'. These signs were considered unnecessary as they would add to visual clutter on their streetscape scene.
- In relation to addressing Item No. 6 it was considered that the revised Housing Quality Audit demonstrates that the minimum standards of the 2020 Guidelines on Design Standards for New Apartments are met.

- In relation to addressing Item No. 7 the revised proposal was considered to accord with the Sustainable Urban Housing; Revised Design Standards for New Apartments, 2020, standards.
- In relation to addressing Item No. 8 it is considered that the provision of bulky storage room at ground floor level for use by future occupants is acceptable.
- In relation to addressing Item No. 9(a) concern is raised that it is not clear if the extended footpath area and its trees are to be taken in charge.
- In relation to addressing Item No. (9b) it was considered that the concerns in relation to what would be public domain is unclear and the bus shelter is something that cannot be conditioned outside of the redline boundary of the site. The submitted drawings do not show a bus shelter within the redline area and there is only reference to a bus stop.
- In relation to addressing Item No. 9(c) it was considered that the redesigned junction and footpaths to the public road are now acceptable.
- In relation to addressing Item No. 9(d) it was considered that the servicing of the smaller commercial elements which as revised now includes a set-down area would require careful site management and therefore an Operational Service Management Plan should be conditioned. It was also considered that there is potential for conflict between the service area and the motorcycle parking. Therefore, a physical barrier may be needed between the two.
- In relation to addressing Item No. 9(e) the revised provisions for waste management on site for the different uses were deemed to be acceptable.
- In relation to addressing Item No. 9(f) the provision of a 3-meter-wide pedestrian link from the site entrance to the rear site boundary to facilitate future access to the lands at the rear of the site subject to future proposals is acceptable.
- In relation to addressing Item No. 9(g) & (h) it was considered that the revised provision of cycle parking for the commercial uses is now acceptable. In relation to the resident cycle parking, it was considered that whilst the direct access from Herberton Road would still require cyclists to dismount an alternative access is also provided via the car park. The cycle parking provision as amended was therefore deemed to be acceptable.

- In relation to addressing Item No. 9(i) the revised provision of car parking provision was deemed to be acceptable.

The Planning Authority's final Planning Officer's report concludes that the applicant has satisfactorily addressed the further information request and that the proposed development as revised accords with the provisions of the Development Plan (Note: 2016-2022). Thus, subject to safeguards the proposed development as revised would accord with the proper planning and sustainable development of the area. A recommendation to grant permission subject to conditions is therefore concluded upon.

The **initial Planning Officer's report** concluded with a request for further information relating to the following matters:

- Item No. 1: Seeks the applicant to address their concerns over the scale, height, and proximity of the proposal to site boundaries as well as the negative impact the proposed development would have on the properties to the north and west due to the inadequate transition in scale.
- Item No. 2: Photomontages from a number of viewpoints were sought.
- Item No. 3: Concerns raised in relation to the location of wall mounted condensers in terms of noise pollution.
- Item No. 4: Concerns raised in relation to Daylight/Sunlight and Shadow impacts on neighbouring properties.
- Item No. 5: Concerns raised in relation to signage and its impact on visual amenities.
- Item No. 6: A revised Housing Quality Audit is sought.
- Item No. 7: Concerns are raised that the proposed 3-bedroom apartment is single aspect.
- Item No. 8: Concerns raised that no additional bulky storage has been provided.
- Item No. 9: Seeks the concerns raised by the Transportation Planning Division to be addressed.

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

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

**Transportation:** Final report concluded with no objection, subject to safeguards.

### 3.3. **Prescribed Bodies**

3.3.1. **Irish Water:** No objection, subject to safeguards.

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

3.4.1. 20 No. Third Party Observations were received by the Planning Authority during their determination. I consider that the key planning issues raised in them correlate with those raised by the Third-Party Appellant in their appeal submission to the Board. For the avoidance of repetition, I note that this submission is summarised under Section 6 of this report below and the 20 No. Third Party Observations are attached to file.

## 4.0 **Planning History**

### 4.1. **Site**

4.1.1. No recent and/or relevant planning history.

### 4.2. **Setting**

4.2.1. **P.A. Ref. No. LRD6020/23-S3** - at the former G4S Property site which is located on the western side of Herberton Road c25m to the north of the appeal site planning permission is currently being sought for the demolition of existing buildings and structures on site and the construction of a mixed-use development across four blocks including 120 no. apartments, medical use, café/retail, and community/ arts/ cultural space. Of note this scheme contains several blocks with Block D which would address Herberton Road having a given 5 storeys c.17.45m total height. This building would include a medical centre through to a café/ retail unit at ground floor with external seating area, community/ arts/ cultural space (reception and community group room) (c. 128 sq.m). Other Blocks such as 'Block A1/ A2' which includes 80 apartments over part 4/5/6 storeys building blocks has given heights of c.15.975m 'Block A1' and c.18.975m 'Block A2'/ residential 'Block B' has a total given height c.12.975 m / mixed

use 'Block C' which is part 3, part 4 and part 5 storeys would have a total height of c.15.975 m. A basement level is also sought which would be accessed from a ramp adjacent to 'Block B'. Of note this application was lodged on the 2nd day of November, 2023 and the Planning Authority sought further information on the 3<sup>rd</sup> day of January, 2024. The four items of the Planning Authority's further information request read:

*"1. There are serious concerns regarding the newly proposed medical centre use and how the activity generated by this use will be addressed and managed. The submitted documentation indicates that the public domain will accommodate virtually all vehicles associated with visitors to the medical centre, given the significant scale of the centre at c. 1,489.6 sqm, this is not acceptable. Due to its inadequate access and car parking strategy for visitors, the proposed development is likely to result in significant overspill parking within the public road/footpath resulting in conflict between vehicles and pedestrians and traffic hazard. The applicant is requested to submit a revised Access Strategy and Parking Management Plan for the proposed development which incorporates the medical centre by fully addressing both staff and visitor requirements and which seeks to minimise the impact on the public road.*

*2. Clarification is required via a revised access strategy as to how pedestrian, vehicular and cyclist access requirements for staff and visitors of the medical centre will be addressed in a manner which minimises the impact on the public road. This should also include pedestrian access to/from any car parking allocation having regard to the fact that in the proposed layout pedestrian access to the basement car park is currently provided through private blocks and accessible spaces are behind gates. The revised access strategy should also clearly demonstrate that the proposed internal road/footpath, junction and basement ramp can accommodate the increase in vehicle access/egress generated by the medical use safely. It should also address the substandard cycle access provision on the basement ramp.*

*3. The applicant is requested to clarify and provide a supporting rationale for the car and cycle parking quantity and allocation for the medical use, particularly for visitors. Given the requirements for public access, the management of the car park shall be reviewed and how this is to be controlled shall be clearly outlined.*

*4. The applicant is requested to submit a revised and updated mobility management plan to address the particular nature of the medical centre and the type of trips*

*generated by this use, in particular visitors, given the scale of the centre and significant attendance anticipated.”*

At the time this report was being finalised the Planning Authority had not received a response from the Applicant.

- **ABP-312300-21 (Note: SHD)**

On the 20<sup>th</sup> day of June, 2022, the Board refused for a development consisting of the demolition of existing buildings, construction of 137 no. Build to Rent apartments and associated site works at the former G4S Property site which is located on the western side of Herberton Road c25m to the north of the appeal site. The stated reasons and considerations read:

- “1. Having regard to the surrounding urban structure and the disposition of the buildings on the site, to the form and scale of the proposal and the separation distances to the site boundaries of adjoining properties, it is considered that the proposal does not provide an appropriate transition in scale or have due regard to the nature of the surrounding urban morphology. The proposal is considered overly dominant, would have an excessively overbearing effect on adjoining property and would unduly overlook the third party private open space. Furthermore, it is considered that the proposal would have a negative impact on the development potential of adjoining property. The proposed development would therefore seriously injure the amenities of property in the vicinity and the character of the area and would be contrary to the proper planning and sustainable development of the area.*
- 2. The Board considered that the proposed development by reason of the sub optimal quality of the proposed communal open space and its limited access to sunlight would seriously injure the residential amenities of future occupants of the proposed development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”*



## 5.0 Policy Context

### 5.1. Local

- 5.1.1. The Dublin City Development Plan, 2022-2028, is the operative plan. The site forms part of a larger parcel of land zoned 'Z10 – Inner Suburban and Inner City Sustainable Mixed-Uses'. This parcel of zoned land extends to the north, west and south west of the site and encompasses Glenview Industrial Estate. The stated land use for Z10 land is: *“to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses”*.
- 5.1.2. Section 14.7.10 of the Development Plan states that the: *“purpose of this zoning is to promote mixed-use in order to deliver sustainable patterns of development in line with the principles of the 15-minute city”; “the concept of mixed-use will be central to the development or redevelopment of these sites and mono uses, either all residential or all employment/office use, shall not generally be permitted”; and that the: “purpose of this zoning is to promote mixed-use in order to deliver sustainable patterns of development in line with the principles of the 15-minute city. The concept of mixed-use will be central to the development or redevelopment of these sites and mono uses, either all residential or all employment/office use, shall not generally be permitted”*.
- 5.1.3. In addition, this Section of the Development Plan states: *“in order to ensure that a mixed-use philosophy is adhered to on Z10 zoned lands, the focus will be on delivering a mix of residential and commercial uses. There will be a requirement that a range of 30% to 70% of the area of Z10 zoned lands can be given to one particular use, with the remaining portion of the lands to be given over to another use or uses (e.g., residential or office/employment). For very small sites, typically less than 0.5ha, flexibility on mix requirement may be considered on a case-by-case basis, where it can be demonstrated that the proposal would not result in an undue concentration of one particular land-use on the Z10 landholding as a whole”*. It sets out that the primary uses supported in this zone are residential, office and retail.
- 5.1.4. The adjoining land to the south and the opposite side of Herberton Road is zoned 'Z1' – *Sustainable Residential Areas*'. The stated objective for 'Z1' zoned land is: *“to protect, provide and improve residential amenities”*.

- 5.1.5. Section 14.6 of the Development Plan deals with Transitional Zone Areas. It states in relation to contiguous transitional zone areas that: *“it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals, and to landscaping and screening proposals, in order to protect the amenities of residential properties”*.
- 5.1.6. The site lies to the south of a red hatched conservation area that encompasses the Grand Canal corridor. These areas are recognised as having conservation merit and importance and therefore are considered to warrant protection through zoning and policy application.
- 5.1.7. Policy QHSN10 of the Development Plan sets out that the Planning Authority will seek to promote sustainable densities with due consideration for design standards and the surrounding character. It refers to Appendix 3 of the Development Plan which it sets out provides guidance on urban density, compact growth, building height, plot ratios and site coverage.
- 5.1.8. The Development Plan includes several policies addressing and promoting apartment developments. These include policies: QHSN36, QHSN37, QHSN38 and QHSN39. They read as follows:
- QHSN36 - High Quality Apartment Development  
*“To promote the provision of high quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and within each apartment development, and ensuring that suitable social infrastructure and other support facilities are available in the neighbourhood”*.
  - QHSN37 - Houses and Apartments  
*“To ensure that new houses and apartments provide for the needs of family accommodation with a satisfactory level of residential amenity in accordance with the standards for residential accommodation”*.
  - QHSN39 - Housing and Apartment Mix

*“To encourage and foster the creation of attractive, mixed use, sustainable residential communities which contain a wide variety of housing and apartment types, sizes and tenures, in accordance with the Housing Strategy and HNDA, with supporting community facilities and residential amenities.*

*Further detail in regard to unit mix is set out in Chapter 15: Development Standards. Unit mix requirements for the Liberties and the North Inner City are set out in Section 15.9.1 and Table 37 of the Housing Strategy in Appendix 1”.*

5.1.9. Section, 4.5.4 and Policy SC15 to SC17 of the Development Plan set out the Planning Authority’s strategy and criteria when considering appropriate building heights, including reference to the performance-based criteria contained in Appendix 3.

- Policy SC15 - Building Height Uses reads: *“to support the development of an adequate mix of uses in proposals for larger scale development which are increasing height or proposing a taller building in accordance with SPPR 2”.*

- Policy SC16 - Building Height Locations reads: *“to recognise the predominantly low rise character of Dublin City whilst also recognising the potential and need for increased height in appropriate locations including the city centre, Strategic Development Zones, Strategic Development Regeneration Areas, Key Urban Villages and other locations as identified in Appendix 3, provided that proposals ensure a balance with the reasonable protection of existing amenities and environmental sensitivities, protection of residential amenity and the established character of the area”.*

- Policy SC17 - Building Height reads: *“to protect and enhance the skyline of the city, and to ensure that all proposals with enhanced scale and height:*

- follow a design led approach;*

- include a masterplan for any site over 0.5ha (in accordance with the criteria for assessment set out in Appendix 3);*

- make a positive contribution to the urban character of the city and that responds positively to the existing or emerging context;*

- deliver vibrant and equitable neighbourhoods that are walkable, compact, green, accessible, mixed and balanced;*

- *Do not affect the safety of aircraft operations at Dublin Airport (including craneage); and have regard to the performance-based criteria set out in Appendix 3*".

5.1.10. Other relevant sections of the Development Plan include the following:

- Section 4.5.2 - Approach to the Inner Suburbs and Outer City as Part of the Metropolitan Area (Policy SC8).
- Section 4.5.3 – Urban Density (Policy No.s SC10, SC11, SC12 and SC13). Of note Policy SC11 on the matter of compact growth seeks the alignment of the Metropolitan Area Strategic Plan in order to promote compact growth and sustainable densities through the consolidation and intensification of infill and brownfield lands, particularly on public transport corridors.
- Section 4.5.9 – Urban Design & Architecture (Policy No.s SC19, SC20, SC21, SC22 and SC23). Of note Policy SC19 in relation to high quality architecture seeks *"to promote development which positively contributes to the city's built and natural environment, promotes healthy placemaking and incorporates exemplar standards of high-quality, sustainable and inclusive urban design and architecture befitting the city's environment and heritage and its diverse range of locally distinctive neighbourhoods"*.
- Section 8.5.1 - Climate Change through Sustainable Mobility. It sets out that this Development Plan seeks *"to reinforces the role of transport policy in minimising the need to travel, shifting to sustainable modes and supporting and encouraging behavioural change"* with Policy SMT1 for example seeking to promote modal shift from private car use towards increased use of more sustainable forms of transport as part of progressing compact growth.
- Section 9.5.1 – Water Supply and Wastewater.
- Section 9.5.4 – Surface Water Management and Sustainable Drainage Systems (SuDS).
- Section 15.4 – Key Design Principles.
- Section 15.5 – Site Characteristics and Design Parameters.
- Section 15.8 – Residential Development.
- Section 15.9 – Apartment Standards.

5.1.11. Chapter 8 of the Development Plan deals with Sustainable Movement and Transport.

5.1.12. Chapter 9 of the Development Plan Sustainable Environmental Infrastructure and Flood Risk.

5.1.13. Table 15-1: Thresholds for Planning Applications sets out that a Retail Impact Assessment Retail development will be required for developments of 2,000-sq.m. (net comparison floorspace) and 1,500-sq.m. (net convenience floorspace) outside of the city centre and KUV's. It also sets out that retail "*includes supermarket, discount supermarket, convenience store, comparison store, retail warehouse, any store for the sale of goods and/ or clothing*".

5.1.14. Section 15.5.1 of the Development Plan on the matter of Brownfield, Regeneration Sites and Large-Scale Development it sets out that regard will be had to several considerations including but not limited to:

- Encourage innovative, high quality urban design and architectural detail in all new development proposals.
- Review the surrounding built environment to ensure the new development is consistent with the character of the area.
- Contribute to the streetscape creating active and vibrant public realm.
- Create animation and create activity at street level and vertically throughout the building.
- Ensure land contamination is appropriately dealt with and mitigated against.
- Provide an appropriate mix of uses comprising retail, residential, recreational, cultural, community- and/or employment generating uses to improve the existing range of uses and facilities in the area.

## 5.2. Regional

5.2.1. **Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES), 2019.**

This Strategy Document supports the implementation of Project Ireland 2040 and the economic and climate policies of the Government by providing a long-term strategic planning and economic framework for the region. The following regional policy objectives (RPOs) are considered relevant to this application:

- RPO 3.2 – in promoting compact urban growth, a target of at least 50% of all new homes should be built within or contiguous to the existing built-up area of Dublin city and its suburbs, while a target of at least 30% is required for other urban areas.
- RPO 4.1 – the relevant Local Authorities are to determine the hierarchy of settlements in accordance with the hierarchy, the guiding principles, and the typology of settlements in the RSES.
- RPO 4.2 – infrastructural investment and priorities shall be aligned with the spatial planning strategy of the RSES.

According to the RSES, the site lies within the Dublin metropolitan area, where it is intended to deliver sustainable growth through the Dublin Metropolitan Area Strategic Plan (MASP) to ensure a steady supply of serviced development land. It advocates sustainable consolidated growth of the Metropolitan Area, including brownfield and infill development, to achieve a target to 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs.

### 5.3. National

- 5.3.1. **Project Ireland 2040 - National Planning Framework (NPF)**, 2018-2040, is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040 and within this framework Dublin is identified as one of five cities to support significant population and employment growth.

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

National policy objectives (NPOs) for people, homes and communities are set out under chapter 6 of the NPF.

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints.
- NPO 4 promotes attractive, well-designed liveable communities.
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards.

- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking.
- NPO 32 targets the delivery of 550,000 additional households by 2040.
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location.
- NPO 57 enhance water quality and resource management by ensuring flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities.

#### 5.3.2. **Housing for All – A New Housing Plan for Ireland, 2021.**

The government's vision for the housing system over the longer term is to achieve a steady supply of housing in the right locations with economic, social, and environmental sustainability built into the system. The policy has four pathways to achieving housing for all:

- Supporting home ownership and increasing affordability.
- Eradicating homelessness, increasing social housing delivery, and supporting social inclusion.
- Increasing new housing supply.
- Addressing vacancy and efficient use of existing stock.

This plan contains 213 actions which will deliver a range of housing options for individuals, couples, and families.

#### 5.3.3. **Rebuilding Ireland – Action Plan for Housing and Homelessness, 2016.**

Pillar 3 of this Plan relates to increasing the output of private housing to meet demand at affordable prices.

#### 5.3.4. **Climate Action Plan, 2023.**

This plan refers to the need to reduce car parking, both for developments and on-street. Alternative construction materials should be substituted for high carbon products.

#### 5.3.5. **National Sustainable Mobility Policy, 2022.**

This policy aims to support this modal shift between now and 2030, through infrastructure and service improvements, as well as demand management and behavioural change measures. This is with a view to encouraging healthier mobility choices, relieving traffic congestion, improving urban environments and helping to tackle the climate crisis. It also takes account of Ireland's commitment to a 51% reduction in our carbon emissions by 2030 and to reach net zero by 2050.

5.3.6. **Places for People – the National Policy on Architecture, 2022:** This policy document provides national policy on architecture and outlines ways to promote and embed quality in architecture and the built and natural environment over the coming years in Ireland.

5.3.7. I consider that the following **Section 28 Ministerial Guidelines** and other national policy documents are relevant:

- Sustainable Residential Development and Compact Settlement Guidelines, 2024, replaces the Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities. They build on and update previous guidance to take account of current Government policy and economic, social as well as environmental considerations. They expand on higher-level policies of the NPF, setting out policy and guidance in relation to the growth priorities for settlements, residential density, urban design and placemaking and introduce development standards for housing. The density ranges they include seek to support the application of densities that respond to settlement size and to different place contexts, recognising in particular the differences between cities, large and medium sized towns and smaller towns and villages.

Of note Section 3.3.1 deals with cities and the Metropolitan (MASP) areas which the site is of relevance to this site.

- Urban Development and Building Heights, Guidelines for Planning Authorities (2018). These outline the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF.
- The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020, updated December 2022, and July 2023).



- Design Manual for Urban Roads and Streets (DMURS), (2019).
- Retail Planning Guidelines for Planning Authorities (2012) and the Retail Design Manual.
- Appropriate Assessment of Plans and Projects in Ireland - Guidelines for Planning Authorities (2009, updated 2010).
- The Planning System and Flood Risk Management (including the associated 'Technical Appendices') (2009).
- Traffic Management Guidelines (Department of Transport, Tourism and Sport, 2019).
- Smarter Travel – A Sustainable Transport Future. A New Transport Policy for Ireland 2009 – 2020 (Department of Transport, 2009).
- Best Practice Guidelines for Delivering Homes, Sustaining Communities – Quality Housing for Sustainable Communities (2007).
- Greater Dublin Regional Code of Practice for Drainage Works (Version 6.0).

#### **5.4. Natural Heritage Designations**

- 5.4.1. None in the vicinity. The nearest site, i.e., South Dublin Bay SAC (Site Code: 000210) is situated c5.5km to the east at its nearest point.
- 5.4.2. I note that the site lies to the south of Proposed Natural Heritage Area: Grand Canal (Site Code: 002104). This pNHA at its nearest point is within 80m.

#### **5.5. EIA Screening**

- 5.5.1. See completed Appendix 1 Form 1 attached to this report.
- 5.5.2. The development subject of this application falls within the class of development described in 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising over 500 dwelling units or over 10 hectares in size or 2 hectares if the site is regarded as being within a business district.

- 5.5.3. The project as lodged in summary consists of the demolition of existing buildings and removal of hard stand to accommodate a mixed-use retail, commercial and residential in nature buildings and spaces on this existing serviced site. As originally sought the demolition component had a given 1,316-sq.m. and the mixed-use building had a combined 9,177-sq.m. including 60 apartment units. On foot of the applicant's further information response the maximum building height was reduced from six to five storeys; the floor area was reduced to 7,523-sq.m. and the apartment unit number reduced to 41. As such the nature and scale of this project falls below the threshold for triggering the need to submit an EIAR and having regard to the nature of the development comprising a significantly sub-threshold residential development on residentially zoned infill/brownfield lands where public piped services are available.
- 5.5.4. In addition, the site is within an area zoned 'Z10' in which residential, retail, and commercial land uses are generally permitted in principle subject to safeguards. The buildings to be demolished on site are not protected structures and they are not within the visual curtilage of any designated Protected Structure. The proposed development will not have an adverse impact in environmental terms on surrounding land uses and is compatible with the objectives, vision, and purpose of 'Z10' zoned land which encompasses the site and land to the north and west of the site in which mixed use redevelopment is encouraged. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other mixed-use development in an inner-city locality like this. The site is not within or near any European site with the nearest such site being South Dublin Bay SAC (Site Code: 000210) which has a lateral separation distance of c5.6km and is situated to the east of the subject site at its nearest point.
- 5.5.5. The application is accompanied by a significant volume of documentation including but not limited to Design Statement, Outline Construction & Demolition Waste Management Plan, Flood Risk Assessment, Infrastructure Report, Traffic and Transportation Assessment, Screening for Appropriate Assessment through to Operational Waste Management Plan. These address the issues arising in terms of the sensitivities in the area, including where deemed relevant the former land use of the site as a petrol station and the decommissioning of this use in circa 2007 including the measures involved.
- 5.5.6. Having regard to the following factors:

- The nature and scale of the proposed development, which as submitted originally and as revised by way of the applicant's further information response is below the threshold in respect of Class 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended.
- The location of the site on Dublin City lands which are zoned 'Z10' for mixed redevelopment purposes under the provisions of the Dublin City Development Plan, 2022-2028, and the results of the strategic environmental assessment of the said plan, undertaken in accordance with the SEA Directive (2001/42/EC).
- The site is served by existing connections to public mains water and foul drainage supply.
- The location of the site which is served by public infrastructure within a developed urban landscape.
- The history of this brownfield site in terms of land use up to the present time.
- The significant lateral separation distance between the site and any sensitive location specified in article 109 of the Planning and Development Regulations, 2001 (as amended).
- The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development," issued by the Department of the Environment, Heritage, and Local Government, (2003).
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended).

5.5.7. I have therefore concluded that, by reason of the location of the site, the site and setting characteristics alongside the nature and scale of the proposed development that there is no real likelihood of significant effects on the environment arising from the proposed development and that on preliminary examination an environmental impact assessment report is not necessary in this case.

5.5.8. Conclusion:

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

## 5.6. **Built Heritage**

- 5.6.1. Whilst the adjoining semi-detached properties to the south of the site are attractive Victorian dwellings in their own right within the immediate vicinity of the site or its visual curtilage there are no Protected Structures or Recorded Monuments.

## **6.0 The Appeal**

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

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

- The proposed development as granted would give rise to overdevelopment of the site and would materially impinge on the residential as well as visual amenity of area.
- The Z10 zoning of these lands only came into effect under the recently adopted City Development Plan and should not provide a carte blanche to the applicant to overdevelop the site in a manner that would be detrimental to residential and visual amenities.
- There is a requirement under the current County Development Plan for development on Z10 zoned land to prepare a Masterplan. None accompanies this application.
- The substantial retail component would seriously injure its setting.
- There is a large mature tree that would be adversely impacted by the proposed development.
- The revised building in their view does not address the Planning Authority's further information request and its scale, height and setbacks are not appropriate for its surrounding context.
- The proposed development would be visually overbearing.
- The proposed development would give rise to adverse daylight, sunlight, and overshadowing impacts on residential properties in its setting and would also give rise to adverse overlooking.

- The Board refused permission for a 137-unit residential scheme to the north under appeal case ABP-312300. This proposal would give rise to similar adverse residential and visual impacts on its setting as such it should be similarly refused.
- The adjoining stretch of Herberton Road is subject to daily car parking pressures and is an extremely busy road that also accommodates Bus Route No. 122.
- The proposed development with limited car parking provision would result in an overspill of car parking on its setting.
- The Traffic Surveys date from November, 2019, and are considerably out of date to inform any decision. Additionally, the Traffic and Transportation Assessment is out of date as well as it does not have regard to the largescale developments that have occurred in this area that have impacted traffic in this locality.
- There is no information provided on the likely future tenants of the smaller retail units proposed.
- It is likely that the supermarket would have similar opening hours to the applicants' other stores which include late hours of opening. With the supermarket use generating delivery and collection vehicles. Thus, causing disamenity for the adjoining and neighbouring residential properties.
- The intensity, the nature and scale of the development would result in traffic hazards on the adjoining road network.
- The traffic movements associated with it would also give rise to nuisance and potential conflicts for the properties opposite it as well as in its vicinity.
- No assessment of the retail impact of the proposal on the vitality and viability of the existing retail environment has been undertaken as well as no examination of alternative sites provided.
- There is no justification for the scale of the retail proposal sought under this application.
- Concerns are raised that this site used to contain a petrol station and it is unknown whether there is undisturbed contamination still present on site from this use. There is limited consideration given to this matter in the documents provided.

- The potential for flooding has not been adequately assessed. Additionally, the flood risk assessment fails to address the potential for underground pipework or storage tanks associated with the previous use of the site as a petrol station being present.
- Concerns are raised in relation to the public foul drainage capacity to absorb the nature and scale of development sought.
- The Screening for Appropriate Assessment reports provided does not correlate with the proposed development and the quantum of gross floor areas referenced.
- The proposed development would negatively impact on property values in its vicinity.
- The overshadowing would adversely impact on solar panels provided on roof structures in the immediate vicinity of the site.
- The Board is sought to refuse permission for the proposed development.

6.2.1. The First Party's Appeal can be summarised as follows:

- Their appeal relates to the requirements of Condition No. 2 and 5 only.
- The Planning Authority have mis-calculated the applicable Section 48 contributions by way of including ancillary residential car parking. Under the current scheme Section 11 sets out that contributions are not required for residential ancillary car parking and Section 12 sets out that the undercroft car parking is calculated at 50% of the applicable rate of contribution. As such Condition No. 2 seeks a payment of €744,735.04 when the correct sum payable is a €627,657.54.
- The requirements of Condition No. 5 are objected to on the basis that the requirement to agree in writing with the Planning Authority prior to the commencement of development a Community and Social Infrastructure Audit as well as the restriction for the use of Retail Units 2 and 3 to community and social uses is contrary to the basis on which conditions can be applied under Section 28 of the Development Management Guidelines.
- In terms of being necessary, the need for community and social uses at this location has not been identified or proven and similar recent assessments of social infrastructure in the area has confirmed no significant additional need for such

uses. On this point reference is made to the Social Infrastructure Audit provided as part of planning application determined under appeal case ABP-312300-21.

- In terms of being relevant to planning the implications of providing community and social uses at two of the ground floor units fronting Herberton Road have not been fully considered as regards to the proper planning and sustainable development of the area.
- There is a real risk that these two units would remain vacant given the restrictions placed on these units. With these units occupying a prominent position on the Herberton Road frontage.
- The requirements of Condition No. 5 fundamentally alter the function and character of the development sought under this application. As such the relevance of its requirements is questioned.
- The wording of Condition No. 5 is not precise by virtue of the first part requiring a community and social infrastructure audit and the second part restricting the use of Units 2 and 3.
- They do not object to the possibility of letting one or more of these units to the City Council for purposes of providing community and social uses.
- It is requested that the Board amend Condition No. 2 and omit Condition No. 5 from the Planning Authority's grant of permission.

### **6.3. Applicant Response**

6.3.1. The Applicants response can be summarised as follows:

- The grounds of the Third-Party appeal generally relate to the design and layout of the proposed development.
- The height, scale and massing of the proposed development has been assessed by the Planning Authority against local to national planning policy provisions and guidance. This assessment found that the proposed development as revised accorded with these provisions.
- The proposed development would give rise to no impact on daylight and sunlight to the existing properties to the south of the site. The loss of daylight to Thistle House to the north meets the relevant guidelines and the impacts are negligible. There will

be a small amount of daylight lost to the properties of No.s 54 to 60 Herberton Road and the potential impact to them is negligible to minor adverse.

- The amenity space to Thistle House has already been compromised by the historical decision to develop the lands to the rear for office and associated car parking uses. This has severely compromised the depth of the rear amenity space to c3 to 4m with daylight obstructed by the wall toppers present on this property's rear boundaries.
- The lateral separation distance between the proposed development and existing residential properties together with the design is such that there will be no undue overlooking.
- In an inner-city context, the transition from two to five storeys given the separation distances involved to adjoining and neighbouring properties is acceptable.
- The Traffic and Transport Assessment concluded that there would be no traffic or transportation related issues arising from the proposed development as permitted. Additionally, the Planning Authority's Transportation Division raised no objection to the proposed development.
- It is clarified that the proposed development would comprise of a net convenience floor space of 1,456 sq.m. and therefore a Retail Impact Assessment is not required.
- The Flood Risk Assessment provided evaluates the flood risk and the Outline Construction & Demolition Waste Management Plan sets out comprehensive decommissioning as well as soil remediation works. Any potential residual contamination will be addressed within the Construction & Demolition Waste Management Plan in accordance with Condition No. 21 of the Planning Authority's notification to grant permission. It is considered that the issues to deal with flooding and contamination have been addressed in the planning documentation.
- The Planning Authority carried out a Screening for Appropriate Assessment.
- The impact the proposed development would have on property values is not a planning consideration.
- The proposed development will provide enhanced convenience retail and commercial services within Herberton Road area.



- The proposed development accords with the local through to national planning policy provisions as well as guidance on building height.
- The Board is sought to uphold the grant of permission.

#### **6.4. Planning Authority Response**

6.4.1. The Planning Authority's response can be summarised as follows:

- The development contribution was applied based on the information available at the time and they are willing to amend the contribution applicable based on the contents of the First Party appeal.
- The Board is requested to uphold its decision.
- Should the Board grant permission it is requested that conditions for Section 48 development contribution; payment of a financial bond; payment of a contribution in lieu of open space; and social housing condition and naming/numbering be included.

#### **6.5. Observations**

6.5.1. The Third-Party Observation can be summarised as follows:

- It is requested that Sign L6 on the southern elevation be omitted in the interest of visual and residential amenity.
- The potable water network was installed in around 1920 and requires renewal in advance of construction works to avoid unnecessary bursts during construction works.
- Protection should be provided of the existing water network to ensure no damage, contamination, or disruption issues.
- The main meter on Herberton Road should be placed in such a way as to allow future maintenance in a public area.

#### **6.6. Further Responses**

6.6.1. The Third Party's further response includes the following additional comments:

- The implications of the scale as well as massing of the proposed development, which fails to respect its setting, and the negative impact it would give rise to on their properties is their foremost concern.
- Whilst the site is within walking distance of the Luas red line this does not justify the scale of overdevelopment proposed at this site.
- SPPR 3 of the Building Height Guidelines cannot be applied in this case as it requires development proposals to respond positively to its natural and built environment as well as enhance the character and public realm of the area. This proposed development fails to do so.
- This proposal fails to meet the criteria set out under Section 3.2 of the Building Height Guidelines.
- The Board is requested to disregard the assessment given by Chris Shackleton that the rear yard of Thistle House is somewhat of a lower amenity value due to it being a yard surrounded by tall boundaries. This amenity space is the only private amenity space serving this property and the degree of overshadowing that would arise from the proposed development on it are unacceptable.
- The impact the proposed development would have on Thistle House alone warrants refusal of permission.
- The Board is sought to refuse permission.

## **7.0 Assessment**

### **7.1. Introduction**

- 7.1.1. I have inspected the site and its context. I have also examined the application details and all other documentation on file, including the First and Third Party appeal submissions, the responses, observations, and further responses received by the Board, alongside I have had regard to relevant local through to national planning policy provisions as well as guidance where relevant.

7.1.2. In relation to the First Party appeal submission received by the Board I acknowledge it first seeks the amendment of the financial contribution payable to the Planning Authority under Condition No. 2 of the Planning Authority's notification to grant permission. Secondly, they also seek the omission of Condition No. 5 from the grant of permission on the basis that it its requirements fails to meet the basic criteria for planning conditions as provided for under Section 28 of the Development Management Guidelines for Planning Authorities. I consider that the concerns raised by the First Party in relation to both of these conditions are of merit with for example Condition No. 2 calculating in error the Section 48 contributions based on the applicable contribution scheme and the development as granted subject to the amendments arising from the further information revised scheme which included but was not limited to for example reduction in floor area. In addition, the requirements set out under Condition No. 5 area arising which essentially restrict the use of two of the retail units also give rise to concerns that in my view give rise to issues that can be dealt with as part of the Board's *de novo* consideration of the subject planning application.

7.1.3. In relation to the Third-Party Appeal and Observation I am satisfied the substantive issues for assessment that it gives rise to are such that they can be adequately assessed as part of the following broad headings:

- Principle of the Development
- Planning History
- Amenity Impact
- Flooding and Drainage Related Matters
- Transport Related Matters
- Appropriate Assessment

7.1.4. In terms of my assessment below for clarity I note that it is based on the proposed development **as revised** by the applicant's further information response submitted to the Planning Authority on the 24<sup>th</sup> day of October, 2022. This is on the basis that there were substantive amenity, transport and other concerns arising from the original proposal as submitted to the Planning Authority on the 10<sup>th</sup> day of May, 2022, and is also based on the qualitative improvements arising to the proposed scheme as part of addressing the concerns raised in this request. In particular, I consider that the

removal of a storey from the proposed building addressing Herberton Road with the overall maximum height being reduced from six storeys (Note: 20.2m) to five storeys (Note: 17.35m) together with the increased setback from the public domain of Herberton Road, including a setback penthouse at fifth story level, results in a more respectful transition in terms of this building and its setting which is one where it occupies land that is adjoined and neighboured by development that is predominantly two storey in height. With these properties particularly to the east and south forming part of land that contrasts with the 'Z10' zoning of the site, zoned 'Z1'.

- 7.1.5. In this regard, I note that Appendix 3 of the Dublin City Development Plan, 2022-2018, which sets out the city's height strategy under Table 3 and under Objective 1, which states that the Planning Authority in assessing proposals for enhanced height, density and scale will seeks that they achieve "*an appropriate transition in scale to the boundaries of a site/adjacent development in an established area*". Further, under Table 14.6. of the Development Plan it sets out that it is important to avoid abrupt transitions in scale, including it is necessary to avoid developments that would be detrimental for the more environmentally sensitive zone.
- 7.1.6. In this case I consider that the 'Z1' adjoining land use zone being the environmentally and more sensitive to change zone.
- 7.1.7. As such the reduction in height in my view in this context that is characterised by the predominance of two storey residential developments of characteristically low scale density, provide a more appropriate graduation and transition between buildings existing. Alongside given the location of the site on the south and eastern fringes of the pocket of 'Z10' land it is appropriate that there is not an abrupt transition of height and scale so that the overall redevelopment of the 'Z10' zoned land sits comfortably and coherently in its urban landscape context. Whilst at the same time being of a height at the 'Z10' boundaries where its height and scale does not give rise to undue amenity impacts on the more sensitive 'Z1' land use zone with its established and mature low scale residential development.
- 7.1.8. Other positive revisions include in terms of the improvement of the development's response to the adjoining 'Z10' zoned land, in particular along its western and north western boundary. With I note 'Z10' zoned land having the stated objective of consolidating and facilitating the development of inner city and inner suburban sites

for mixed use. As such the adjoining Glenview Industrial Estate which adjoins the western and northern boundaries of the site is considered under the Development Plan to have latent potential for future mixed-use redevelopment. This is promoted as part of the overall delivery of more sustainable compact patterns of development in line with the principles of the 15-minute city under the Development Plan.

- 7.1.9. In this relation to the improvements included that would in my view give rise to a more cohesive redevelopment of 'Z10' land at this location the revised design includes a slight reduction in parapet height of the building located towards the western end of the site from 11m to 10.2m crucially and an increased lateral separation distance of between 8m to 9m between the proposed building and its western boundary. These changes reduce the potential for adverse amenity impact on future redevelopment including the potential to provide dwelling units through to public domain in vicinity of this boundary.
- 7.1.10. Additionally, the revisions include improvements to the articulation and improved external treatments of the western façade through to the provision of a potential future 3m link between the Herberton Road's public domain. There are also improvements to the northern elevation's articulation and palette of materials of the proposed building. With I note the vacant G4S site to the north subject to a concurrent application with the Planning Authority (See: Section 4 of this report above).
- 7.1.11. Moreover, the revised design includes increase in width of the public footpath fronting Herberton Road which would be increased by 500mm to 3.2m. Whilst the proposed revised design does not include the provision of a bus shelter but does include the maintenance of the Bus Stop 7439 at a revised location along the eastern roadside boundary. Arguably, in time the increased width of the public domain could accommodate the provision of an improved bus shelter for those waiting at Bus Stop 7439 during poor weather conditions. I also consider that the increased width of the public footpath would importantly allow for improved pedestrian movements along the roadside boundary including less potential for conflict with those waiting and departing from a bus at the relocated Bus Stop 7439.
- 7.1.12. These are some of the substantive reasons as to why I consider that the revised design would give rise to a more site sensitive and appropriate outcome. I also acknowledge that the reduced height, scale, and volume of the proposed building would inevitably

result in less potential for adverse amenity impacts to arise for properties in its vicinity. In particular in terms of overshadowing, loss of sunlight/daylight through to less potential for overlooking from upper floor levels. It would also as said have of a prejudicial impact on future redevelopment of the adjoining 'Z10' zoned lands.

7.1.13. I also note to the Board that the decision of the Planning Authority, in relation to this subject planning application, was made when the Dublin City Development Plan, 2016-2022, was in effect. Moreover, the First Party appeal was also lodged when this Plan was also in effect. The Dublin City Development Plan, 2022-2028, came into effect on the 14<sup>th</sup> day of December 2022, and the Third Party lodged their appeal the day after. My assessed below is based on the provisions of the Dublin City Development Plan, 2022-2028, alongside all relevant regional and national planning policy provisions as well as guidelines that are applicable at the time this report has been prepared.

## **7.2. Principle of the Proposed Development**

7.2.1. At the time of inspection, the appeal site was in use as a car sales and service location for Bright Ford Motors. I note that this type of land use is permissible on 'Z10' zoned land. Notwithstanding, the current and established land use of the site could be considered as a mono-use given that the primary land use function is retail to the sale of vehicles with servicing vehicles being an ancillary use that is also carried out on site. This is often the case with car sale type land use. On this basis I consider that the use of the site as observed on the day of inspection does not accord with the requirement for 'Z10' zoned lands to accommodate a range of between 30% to 70% to one particular use, with the remaining portion of the lands to be given over to another permissible land use or uses.

7.2.2. According to the documentation submitted the proposed development seeks the demolition of the existing buildings on site (Note: 1,316m<sup>2</sup>) together with the removal of the extensive hardstand. The latter characterises most of the site but there are also boundaries and other ancillary structures present for which removal would be required as part of facilitating the provision of the proposed mixed-use development of the site. With this mixed use building as revised having a reduced gross floor area of 7,523m<sup>2</sup>.

7.2.3. Acceptability of Demolition and Site Facilitating Works:

- 7.2.4. In relation to this component of the proposed development I consider that the existing built structures which have a given total floor area of 1,316m<sup>2</sup> and are predominantly industrial/warehouse in their appearance are of no architectural or other merit to warrant their protection. Additionally, the extensive hard stand on site which accommodates mainly vehicle parking and circulation spaces does not result in efficient functional or sustainable use of serviced urban land. It also limits the sustainable drainage of surface water within the confines of the site given that there is effectively zero deep soil present. Moreover, the ancillary structures including boundaries are also of no architectural or other merit that would warrant their protection and retention as part of any redevelopment of this brownfield 'Z10' urban serviced and accessible inner-city site.
- 7.2.5. However, the Board should in my view have cognisance to the historical land use of the subject site. In particular, its previous use as a petrol station. In relation to this previous use, it would appear that at grade and above ground level that elements associated with this former use appear to have been removed. However, the Third Party in their appeal submission to the Board contend that there is potential for the decommissioning works to have left behind infrastructure and contaminants from this previous use with this in turn impacting the potential of this site to be redeveloped as now proposed under this application due to the potential that disturbance of the same could be prejudicial to health and the environment.
- 7.2.6. The First Party in their accompanying documentation for this planning application acknowledges the history of the site which includes its former use as a petrol station prior to its current use as a car sales and service use by Bright Ford Motors.
- 7.2.7. They also set out that as part of their preparatory investigations of the site they found that a number of underground storage tanks were removed from the site during the decommissioning of this use in circa 2007 and that at this time there was also soil remediation works undertaken in conjunction with these works. They contend that this involved the excavation of impacted soil by this former use. Notwithstanding these findings they set indicate that as a precaution they are taking the position that there is still potential for remnant contaminants of this former use to still be *in situ* below ground level in the form of parts of the structures associated with the storage and sale of fuel. As well as there is a potential for there to be localised hotspots of contaminated materials still present on this site. On this basis it is their intention to complete the

proposed development to the highest standards and in accordance with all relevant standards and guidelines on dealing with brownfield sites where contamination is like that arising from use as a petrol station is a potential concern. I note that this approach is set out in their accompanying Outline Construction and Demolition Waste Management Plan.

7.2.8. I note to the Board that Section 15.18.12 of the Development Plan deals with the matter of ground contamination. It acknowledges that historic uses of sites where contaminated could cause an environmental problem and it states that: *“any contaminated land will require appropriate remediation prior to redevelopment, including, in some instances, removal of material from a site which may require a licence under the Waste Management Act, 1996, as amended, prior to the undertaking of such works (see Section 9.5.6). In all cases involving contaminated land, it is the policy of Dublin City Council to require the highest standards of remediation and where appropriate to consult with the Environmental Protection Agency and other relevant bodies to resolve the environmental pollution created by contaminated land”*. It also requires for situations where previous history of a site suggests that contamination may have occurred, developers will be responsible for the following:

- Undertaking a detailed site investigation, soil testing and analysis to establish whether contamination has occurred.
- Providing a detailed written report of investigation and assessment (including recommendations for treating the affected ground) to the City Council.
- The decontamination of sites prior to new development works taking place, and the prohibition of development until the City Council is satisfied that the affected ground has been satisfactorily treated.
- Decontamination activities should ensure that there is no off-site migration of contaminants via run-off, soils, or groundwater.

7.2.9. From the information submitted with this application and the submissions of the First Party it is in my view clear that their precaution approach and willingness to comply with required best practices for dealing with any legacy contamination on site from its previous use as a petrol station. It is not uncommon for petrol station as a land use to be abandoned and such sites redeveloped to accommodate different land uses. Whilst it is costly remediating such sites there are accepted best practice



methodologies for doing so and it would be unreasonable in my view to consider that this former land use would prejudice this site from being developed in a manner that accords with the Development Plans vision and objectives for 'Z10' zoned land at this location.

- 7.2.10. On this basis should the Board be minded to grant permission for the proposed development I recommend that they include an appropriately worded condition that requires the developer to robustly meet the requirements of Section 15.18.12 of the Development Plan and for them to engage an appropriately qualified environmental consultant to carry out a detailed site contamination report complete with appropriate to best standard remediation measures, if required. With this report being subject to the written agreement with the Planning Authority prior to the commencement of any development and with this report setting out the agreed remediation measures, if required, and, where required the methodology through to timescales for these works to be carried out in accordance with best practices.
- 7.2.11. Such a condition is both reasonable and appropriate in the interest of public health as well as to ensure a proper standard of development and should in my view overlap with the requirement by way of condition and/or conditions for requiring a finalised detailed demolition and construction management plan as well as waste management plan. Subject to these safeguards I consider that the principle of refusing permission for the proposed development based on the site's former use as a petrol station and the potential for the site to still contain remnant contaminated material and soil would not be warranted.
- 7.2.12. In terms of other potential adverse impacts arising from the ground works to carry out the proposed development sought I consider that the matter of archaeology is a material concern given the long history of human settlement in this urban location.
- 7.2.13. I note that the documentation accompanying this application includes an archaeological assessment of the site and its setting. This assessment found that the site has been subject to development throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries with former development in the 19<sup>th</sup> Century being residential in nature. It also found that whilst the site is now commercially developed and so used there are no identifiable archaeological features present known or unknown from the authors desktop examination or their site inspection examination. Moreover, they considered that it is

quite possible that the development that has occurred on the site to date is likely to have had an adverse impact on archaeological deposits or features that have the potential to survive beneath the existing ground level with no surface expression. Despite this the author considered that there is still some potential for remains of the former 'Springfield' and 'Bloomfield' houses to be located below the current ground surface. This report concluded with the recommendation that all ground disturbances associated with the proposed development be monitored by a suitably qualified archaeologist. Additionally, any further mitigation measures requiring approval from the National Monuments Service and the Dublin City Archaeologist should any features of archaeological potential being discovered.

7.2.14. Given the available information on this matter, the archaeological assessment provided, the lateral separation distance from archaeological discoveries of interest, I raise no substantive material concerns in terms of the potential for the proposed development to give rise to adverse archaeology impact subject to the safeguards recommended being imposed by way of condition in the event of a grant of permission. I consider that such a condition to be appropriate as a precaution to safeguard *in situ* or by record any unknown surviving archaeological features that may be present below ground on this site in a manner that accords with best practices.

7.2.15. I therefore raise no substantive concerns in terms of the principle of the demolition through to ground preparation works that would be involved in facilitating the redevelopment of these 'Z10' zoned lands as part of securing its appropriate redevelopment in a manner that accords with the land use objective of such zoned lands. That is to say the consolidation and facilitation of the development of inner city and inner suburban sites for mixed-uses.

7.2.16. Acceptability of the Principle of the Mixed-Use Development Sought

7.2.17. This 0.45ha appeal site forms part of an inner city urban landscape that has a transitional character with development to its south and east being predominantly characterised by two storey residential built forms dating from Victorian to circa the 1950s era. With the site forming part of a larger urban area that accommodates mainly large scale industrial, warehouse and commercial in nature buildings with these bounding and set back from the western side of Herberton Road towards its northern end. In addition, the site is situated over 3km to the south west of Dublin's city centre and Herberton

Road connects to the heavily trafficked Dolphin Road (R111) circa 80m to the north and Crumlin Road (R110) circa 225m to the south.

- 7.2.18. The local through to national planning policy provisions encourage the rejuvenation of urban areas including the reutilisation of brownfield sites for increased heights and increased densities, subject to qualitative assessment safeguards. For example, Chapter 2 of the Development Plan, which I also note sets out the Core Strategy, under Section 2.3 promotes compact growth throughout the city through appropriate infill development and consolidation of brownfield sites. It further acknowledges that such sites have the: *“capacity to absorb a greater intensification of development owing to their proximity to public transport corridors and supporting urban infrastructure”*.
- 7.2.19. Additionally, the National Planning Framework also targets for housing delivery on brownfield lands within urban areas. This in my view is evident under National Policy Objectives 6, 13 and 35. Moreover, in terms of supporting compact urban growth the NPF targets 50% of new housing growth in the cities including Dublin within the existing built-up footprint, on infill or brownfield lands.
- 7.2.20. This approach is carried through in the Sustainable and Compact Settlements Guidelines for Planning Authorities which sets out as part of achieving compact growth, it will also be necessary to increase the scale of new buildings in all parts of our cities and towns, with highest densities at the most central and accessible urban locations, including at locations close to public transport. It also sets out that it will be necessary to adapt the scale and form of development to the receiving environment and to ensure a proportionate response. Higher densities and taller buildings that exceed the traditional scale will be encouraged in the most central and accessible parts of our cities, particularly in large regeneration areas, and subject to the protection of historic fabric, character, amenity, natural heritage, biodiversity, and environmental quality. Overall, these guidelines seek that Planning Authorities should actively promote and support opportunities for intensification.
- 7.2.21. In relation to the Regional Spatial and Economic Strategy also similarly supports and targets housing delivery on brownfield lands within urban areas under Regional Policy Objectives 4.3 and 5.4.
- 7.2.22. These particular RPO's seek to encourage the rejuvenation of urban areas including by way of reutilising serviced brownfield sites for increased heights and densities

subject to qualitative assessment safeguards as part of achieving more compact development within urban areas.

- 7.2.23. As such I consider that planning policy provisions at local through to national level support redevelopment of brownfield lands like this site, but this is subject to the fundamental requirement of balancing such developments with the protection of existing residential amenities as well as the established character of the surrounding area whilst at the same time ensuring a high quality of sustainable more climate resilient vibrant and health place making development.
- 7.2.24. As part of this I consider that the site is in an accessible inner-city location. With this conclusion based on several factors including located alongside its adjoining roadside public domain is a bus stop for Bus Route No.s 122 and S2 which run in a northerly direction at this point. I note that Bus Route No. 122 runs from Crumlin Hospital and ending at Ashington Park going through Dublin City Centre. With this route passing by Griffith College, College Green, O'Connell Street, the Mater Hospital to mention but a few of the key locations it serves. I also note that Bus Route No. S2 runs from Smithfield to Irishtown passing several key locations including but not limited to Heuston Station, Rialto Luas, Sandymount Station, St. James Hospital through to a number of south Dublin inner city and inner suburban areas like the Liberties, Ballsbridge, and Ranelagh.
- 7.2.25. Near to the south east of the site, on Herberton Road, there is another bus stop which accommodates the southerly leg of the aforementioned bus routes. With these buses have a frequency of c8/9minutes during peak hour.
- 7.2.26. In addition to this on Crumlin Road there is a number of bus stops accommodating other Dublin Bus Routes, e.g., Bus Route No.s 27, 56A, 74, 77A and 151 as well as the site is within 550m of Rialto Luas Stop. Additionally, the site is also within walking distance of the Grand Canal, Brickfield Park, the Coombe Hospital, St. James Hospital through to Crumlin Shopping Centre. There is also an existing strong residential population with existing social as well as community infrastructure present within walking distance.
- 7.2.27. Having regard to the purpose of 'Z10' zoned land the mixed-use nature of the proposed development, which as revised comprises of 7,523m<sup>2</sup> gross floor area with this including a 'Lidl' convenience supermarket (Note: given sales area totalling 1,456m<sup>2</sup>;

three separate retail units (Note: gross floor internal area for Retail Unit '1' – 166m<sup>2</sup>, Retail Unit '2' – 181m<sup>2</sup>, and Retail Unit '3' – 75m<sup>2</sup>) and 41 no. apartment units with a nett internal area of 4,074m<sup>2</sup>. This mixture and quantum of mixed uses accords with the mixed-use philosophy which the Development Plan seeks is adhered to by developments 'Z10' zoned lands (Note: Section 14.7.10). I therefore consider that the proposed provides an appropriate mixture of permitted land uses avoiding being a mono-type land use redevelopment scheme. Additionally, I am cognisant that Section 14.7.10 of the Development Plan indicates that the primary uses supported on 'Z10' lands including residential and retail. As such the proposed development accords with the principally supported land uses for this location.

- 7.2.28. In addition, I also note that the 'Z10' zoned land as provided for in its stated objective is a land use that relates to inner city and inner suburban areas of the city. In this regard, Appendix 3 Table 2 of the Development Plan in terms of the quantum of development deemed to be acceptable on such zoned land provides an indicative Plot Ratio and Site Coverage of 2.5-3.0 and 60-90% respectively.
- 7.2.29. The documentation accompanying this application indicates that the proposed development as revised has a plot ratio of 2 and site coverage of 64%. However, the plot ratio has been calculated on the original gross floor area of buildings proposed, i.e., 9,177m<sup>2</sup>. Whereas the development as revised and as clarified by the First Party in their appeal submission 7,523m<sup>2</sup>. Thus, I consider that when the correct gross floor area is taken account of in the calculation for plot ratio a lower figure of 1.66 would be concluded upon.
- 7.2.30. Given the transitional zonal character of the site and with Herberton Road forming a physical boundary between 'Z1' residentially zoned land to the east together with the southern boundary of the site also adjoining 'Z1' zoned land. With these adjoining and neighbouring lands as previously discussed being characterised by mature low scale residential development the lower plot ratio of 1.66 and the site coverage being at the lower percentage of that deemed acceptable are not a substantive concern given that the Development Plan clearly seeks to avoid an abrupt transition in scale in this type of circumstance.
- 7.2.31. Additionally, the Development Plan seeks in such circumstances to ensure that a reasonable balance is reached between accommodating compact higher density

developments, which in this case gives rise to taller buildings than that which characterises the site surroundings. In this case the lower plot ratio and site coverage proposed for this scheme as revised reflects in my view that regard was had to the site's edge of 'Z10' zoned land location and the site surrounding site context. It also supports that the proposed scheme is one that does not seek to overdevelop the site within the parameters deemed acceptable for 'Z10' zoned land in terms of site coverage and plot ratio.

#### 7.2.32. Principle of Density

7.2.33. In my view this appeal site, having regard to the provisions of the Sustainable and Compact Settlements Guidelines for Planning Authorities, 2024, is located in the 'City – Urban Neighbourhood' area and density range for which Chapter 3 Table 3.1 where a broad density range of between 50 to 250 dwellings per unit hectare shall be generally applied. This is on the basis that the urban neighbourhood the site forms part of given its locational proximity to the city centre, the 'Z10' land use zoning of the site through to the level of existing public transport in the vicinity of the site and its setting.

7.2.34. The proposed development as revised has a proposed residential density of 109 dwellings per hectare which is consistent with Table 3.1 of the aforementioned Guidelines. The revised density is however a reduction from 133 dwellings per hectare as sought under the subject planning application when submitted to the Planning Authority. Notwithstanding, having regard to Table 1 of Appendix 3 of the Development Plan the density ranges supported in former 'Z6' zoned lands, which is the former land use zone applicable to the site prior to Variation 22 of the previous Development Plan, is between 100 to 150 units per ha, I consider that the revised density of 109 dwelling units per hectare is consistent with said Table 1 and at the lower scale of the density generally sought for former 'Z6' zoned lands reflects the edge of the site's location on such zoned land, the surrounding pattern of development and the more sensitive to change 'Z1' zoned land that lies on the opposite side of Herberton Road and adjoining the southern boundary of the site.

7.2.35. I note that Section 15.5.5 of the Development Plan on the matter of density sets out that: *"the density of a proposal should respect the existing character, context and urban form of an area and seek to protect existing and future amenity"*.

- 7.2.36. This is further reiterated under Appendix 3 of the Development Plan which provides further guidance and considerations for the assessment of density. Including it states that where such sites abut existing lower density residential areas that: “*appropriate transition of scale and separation distances must be provided in order to protect existing amenities*”.
- 7.2.37. Additionally, the Development Plan sets out that locations for intensification must have reasonable access to the nearest public transport stop. In line with national guidance, it sets out that higher densities will be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station in the plan, subject to the safeguards set out in Table 3 of Appendix 3. I note that this table sets out the performance criteria for assessing proposals for enhanced height, density, and scale in the city context. I consider that this site is a location having regards to its proximity to bus and rail public transport as previously described in this assessment, together with the site’s proximity to major traffic routes, Dublin’s city centre and employment centres, is an accessible sustainable location for higher density residential development. As such I consider that the density of 109 units per hectare is generally acceptable at this urban location in terms of local planning provisions with these reflective of national planning policy provisions and guidance on such matters.
- 7.2.38. In general, having regard to the location of the subject site, the brownfield nature of the site, the objectives for ‘Z10’ zoned land and the easy access to public transport, I am satisfied that the principle of compact high-density mixed use development is acceptable and in accordance with the purpose and objectives of local through to national policy and I do not consider that the density as revised could be considered to support that this proposal would give rise to overdevelopment of this site.
- 7.2.39. The concern of overdevelopment is a substantive issue raised by the Third Party in this appeal case and I consider further examination of this issue should be had in terms of assessing the potential amenity impacts that could arise from the proposed development on its site context, including residential properties in its immediate vicinity that are sensitive to change. I therefore propose to examine such matters in more detail under the following sections of this report below.
- 7.2.40. Principle of Residential Mix

- 7.2.41. In relation to residential mix of the residential scheme I note that the proposed residential component as revised consists of 20 No. 1 Bedroom Apartment and 21 No. 2-Bedroom Apartment. I note that this residential mix did not give rise to any substantive concern by the Planning Authority who as noted previously determined this application, in local planning policy context, on the previous Dublin City Development Plan.
- 7.2.42. In terms of this mixture of units Appendix 3 of the current Development Plan identified intercensal changes within the Dublin City Council area that show a reduction in one and four person households at a relatively slow rate and five plus person households at a much higher rate. It also sets out that two and three person households are on an upward trend with two person households increasing at the highest rate of 0.23 percent per annum.
- 7.2.43. However, Section 6.5.1 of the Development Plan set out for areas outside of where specific Housing Need and Demand Assessments (HNDAs) have been prepared, which in this case area areas outside of the North Inner City and the Liberties Sub City areas, that the provisions of SPPR 1 of the Sustainable Urban Housing Guidelines for New Apartments is applicable. This specific planning policy states out that: *“housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms”*.
- 7.2.44. In this case the 20 No. 1 bedroom apartment units just marginally falls below the stated permitted threshold. As such given that the site does not form part of a location where a specific HNDA has been prepared the unit mix of apartments proposed are consistent with relevant national planning policy provisions and guidance on such matters.
- 7.2.45. I also concur with the Planning Authority that in general the residential amenity spatial amenity standards for future occupants of the proposed apartments adhere with or exceed local and national planning provisions.
- 7.2.46. Notwithstanding, I raise it as a concern that 60.97% of the apartment units proposed are single aspect. With Chapter 15 of the Development Plan requiring housing developments to comply with SPPR 4 of the said Guidelines.



7.2.47. In this regard, SPPR 4 sets out that a minimum of 33% of dual aspect units will be required in more central and accessible urban locations, where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate in. I again note that 'Z10' land use objective clearly refers to it inner city and inner suburban locations. Accordingly having regard to the site's land use zoning and the locational factors of the site within the urban landscape of Dublin city I concur with the Planning Authority that the proposed development in this case does not conflict with the requirements of SPPR 4.

#### 7.2.48. Principle of Retail Use

7.2.49. In relation to retail use, as previously noted this includes but is not limited to a Lidl supermarket with ancillary off-licence, bakery, and associated spaces. It is proposed to locate this component of the proposed development over the proposed undercroft area of the mixed-use building. The proposed supermarket would be accessible from this undercroft by travellers located at entrance level fronting onto Herberton Road. The given sales area of this component of the development is 1,456m<sup>2</sup> in the revised documentation. In addition, three other separate retail units with a combined internal floor area of 422m<sup>2</sup> are also proposed with these addressing Herberton Road and the setback area with the southern boundary of the site. No end users are indicated for these three units in the documentation submitted with the First Party's response received by the Board indicating a willingness to let one or two of these units to the Council should they require them for community and/or social related uses. As already discussed in this assessment above retail is a land use deemed a primary land use supported on 'Z10' zoned land under the current Development Plan. As such I raise no objection to the general principle of retail development at this location including pf the nature and mixture set out in the revised scheme.

7.2.50. Further, as part of the documentation accompanying this application there is a Planning Application Report. This document sets out that based on an examination of this area that based on the population residing within 1km radius of the site based on the 2016 which the population having grown since this time that the retail element as proposed can easily be accommodated by the existing demand and would be a welcomed addition to an area where such services are somewhat deficient. This deficiency is based on an examination of the existing retail offer being one that is described as largely confined to a Dunnes Stores within the Crumlin Shopping Centre

and two small convenience stores. Alongside this it is noted that the site forms part of a larger area of rezoned 'Z10' land that together with the SDRA's in its vicinity has and will bring about increased residential development to this area which in turn has helped to support the resurgence of local retail provision in this inner city and canal ring location. It is contended that further redevelopment and regeneration of this area will ultimately increase the demand for a wider choice of retail offerings, including supermarkets. With the development designed to address Herberton Road through the proposed ancillary retail units being suitable for use as café and restaurant type used that at ground floor level would add to the vibrancy and vitality of this streetscape scene.

- 7.2.51. I note that Chapter 15 of the Development Plan sets out under Table 15-1 that the threshold for the provision of a Retail Impact Statement with a planning application is 2,000 sq.m. (net comparison floorspace) for retail development including supermarket, discount supermarket, convenience store, comparison store, retail warehouse, any store for the sale of goods and/ or clothing; and, 1,500m<sup>2</sup> (net convenience floorspace) outside of the city centre and KUV's.
- 7.2.52. Given that the retail component has a combined internal floor space of 1,878m<sup>2</sup> and as said the convenience element is below 1,500m<sup>2</sup>. I consider that there is no requirement for this application to carry out and provide a Retail Impact Statement as part of this planning application.
- 7.2.53. Additionally, Section 15.5.1 encourages the inclusion of retail where they are permissible given that it is a use that is recognised as having the potential to help in the regeneration and rejuvenation of lands were this use is permissible.
- 7.2.54. Furthermore, Appendix 2 of the Development Plan sets the Retail Strategy for the city. This strategy is consistent with the Retail Planning Guidelines five policy objectives through to other strategic documents including but not limited to The Retail Strategy for the Greater Dublin Area. It is also more up to date document that is based on a detailed examination of retail in the plan area upon which the Development Plan's retail hierarchy and the specific provisions through to guidance for retail planning applications are based.
- 7.2.55. I note in relation to convenience retail/supermarket, which I am cognisant is the main retail component of this mixed development scheme, that Section 4.1 of the

Development Plan's retail strategy sets out that it is the policy to promote the development of appropriately scaled convenience retail development in the city. Including where such developments can provide an important anchor to secure the vitality and viability of urban villages. It also recognises that new convenience retail provision offers greater consumer choice and competition as well as can provide much needed neighbourhood scale retail provision. It further notes that over the last 10 years, that helped by population growth in the inner city, that the number of significant new convenience stores, particularly discount food sector, has risen.

- 7.2.56. I am also cognisant that the Development Plan sets out that it is not the policy of the Council to limit appropriately scaled convenience retail development in the city. Particularly in new regeneration areas and where such development can provide an important anchor to secure the vitality as well as viability of urban villages like that which is in essence sought by way of the 'Z10' land use zoning of the site and its surrounds encompassing the surrounding Glenview Industrial Estate and the former G4S site.
- 7.2.57. Further, whilst the nearest Lidl convenience store is located at No. 48-52 Cork Street which is c1.2km on foot from the site the intervening urban landscape around it and the subject site are quite different to one another. With No. 48-52 Cork Street being part of an inner-city area that has been subject to significant increased populations through the reshaping of this area by extensive high-density redevelopment of brownfield lands including lands forming part of the SDRA of the Liberties and New Market Square.
- 7.2.58. It is also a common that supermarkets of this size, including standard Lidl stores, include a bakery and off-licence as part of their customer offer. I therefore do not raise any substantive concerns in terms of these retail offers subject to inclusion of appropriate standard conditions that include measures to capture odours from the bakery element should that be needed given the proximity of the site to residential properties. There are other codes governing the sale of alcohol that would be applicable to Lidl and the signage proposed does not explicitly relate to this retail provision.
- 7.2.59. In terms of the design and layout of the proposed development, I consider that it is suitable to be adapted to different formats of permissible 'Z10' zoned uses such as retail and commercial developments, including the café, restaurant through to

community uses of three smaller retail units. Accordingly, I consider that there is flexibility for this proposed mixed-use scheme to accommodate changes of use to retail floor area proposed should there be a need to find another economically viable use in future.

7.2.60. I also consider that the subject pocket of 'Z10' urban lands the site forms part, if permitted, could potentially start their regeneration as part of securing the Development Plans vision for this land. With the existing land uses and vacant sites offering untapped potential for more appropriate land use redevelopment. I note that there is a current application with the Planning Authority for the former G4S Property site to the north, which is currently vacant and is within c26m of the northern boundary of the site. The proposed development sought includes 120 dwelling units and a medical centre (Note: P.A. Ref. No. LRD6020/23-S3).

7.2.61. Accordingly, I accept that in this case the retail component of the proposed development as revised which includes an average sized Lidl supermarket fronting Herberton Road together with the other smaller retail units, would as part of this mixed-use development help to rejuvenate these 'Z10' zoned lands in a manner that is consistent with local planning provisions for this area. Alongside these uses together with the improvements to the public domain would contribute to improved vitality and vibrancy of the western stretch of Herberton Road which marks the southern and eastern most point of this pocket of 'Z10' zoned lands.

7.2.62. General Principle of Increased Height

7.2.63. The Third-Party appellant considers that the reduction in height from six storeys to a maximum of five storeys in height does not address the visual incongruity, overbearing impact through to diminishment of established residential amenities that would arise from the proposed development if permitted, on the basis that the prevailing character of height in the surrounding area is two-storey.

7.2.64. On this concern I note that the Height Strategy for Dublin City is set out in Appendix 3 of the Development Plan. With this strategy having been revised from that set out in the previous Development Plan and the current strategy seeks to ensure consistency between it and the Urban Development and Building Heights Guidelines for Planning Authorities (December 2018), including the SPPR's contained in this document.

- 7.2.65. Section 1.0 of the said strategy sets out that it seeks to provide guidance regarding appropriate areas for increased density and height. It sets out a comprehensive set of performance-based criteria for the assessment of applications where significant urban intensification is proposed. With the purpose of these criteria: *“to ensure that a form and intensity of urban development is achieved that contributes to the overarching objectives of the plan to create sustainable communities and high quality places for people to live and work”*.
- 7.2.66. I consider that the Height Strategy set out under Appendix 3 aligns with the Development Plans Core Strategy and other relevant higher level regional through to national planning policy documents and guidance. With this including the NPF and the Urban Development and Building Heights Guidelines.
- 7.2.67. In relation to the NPF, it sets out that the main determining factor in considering appropriate heights is: *“the need to create exemplar urban development with attractive streets, spaces and public areas that integrate successfully with the surrounding area. The key factors that will determine height will be the impact on adjacent residential amenities, the proportions of the building in relation to the street, the creation of appropriate enclosure and surveillance, the provision of active ground floor uses and a legible, permeable, and sustainable layout”*.
- 7.2.68. The Development Plan’s strategy for building height aligns with NPO 13 of the NPF which identifies building height as an important measure to achieve compact growth and NPO 35 which states: *“increased residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”*.
- 7.2.69. In relation to the Urban Development and Building Heights Guidelines for Planning Authorities which includes several Specific Planning Policy Requirements (SPPRs) which a Planning Authority is required to have regard to, these recognise the role that taller building play in the achievement of compact cities and densification. As well as it acknowledges that increased height is a significant component in making the optimal use of sites in urban areas where public transport, employment, services, and retail development can achieve appropriate levels of intensity to achieve greater sustainability within the urbanscape of settlements.

7.2.70. Overall, whilst the general principle of taller buildings is deemed to be acceptable, the safeguards include that where such buildings of increased height in comparison to their prevailing context that the performance criteria set out in Table 3 Appendix 3 of the Development Plan shall apply. As such given that the prevailing context is two storeys in nature and scale, the fact that this proposal as revised has a maximum 5-storey height, a detailed assessment must be had against the performance criteria of the said table. This I propose to do in more detail in my assessment below.

7.2.71. Masterplan

7.2.72. Given the area of this appeal site there is no requirement for the preparation of a 'Master Plan'.

7.2.73. Conclusion

7.2.74. Based on the above considerations I am satisfied that the proposed development, which includes the demolition of existing buildings through to the construction of mixed-use building with a maximum five storey height and containing a mixture of retail as well as residential land uses therein, on site, is generally acceptable in principle, based on the land-use zoning of the site and the transitional land use zoning as well as character of the surrounding area, as provided for in the Development Plan, subject to safeguards.

### **7.3. Planning History**

7.3.1. The site itself has no recent and/or relevant planning history. However, the Third-Party appellant in this appeal case, consider that there are strong parallels between this proposed development before the Board and a recently decided Strategic Housing Development application by the Board which related to the former G4S Property site (Note: ABP-312300-21) to the north.

7.3.2. I therefore note that ABP-312300-21 SHD case was refused on the 20<sup>th</sup> day of June, 2022, for two stated reasons and considerations. Firstly, the Board considered that this development would be overly dominant and would have an excessively overbearing effect on adjoining property, by way of undue overlooking through to it would have a negative impact on the development potential of adjoining property. Secondly, the Board considered that the communal open space provisions serving future occupants was sub-optimal and that the limited access to sunlight would

seriously injure the residential amenities of future occupants of the proposed development.

- 7.3.3. For these given considerations it was considered by the Board in their reasons and considerations of refusal that the proposed development would be contrary to the proper planning and sustainable development of the area.
- 7.3.4. The Third Party contend that the same issues arise from the proposed development even as revised if it were to be permitted. They therefore seek that the Board should similarly refuse the proposed development for the same given reasons and considerations of ABP-312300-12.
- 7.3.5. In terms of the relationship of this site is located on the western side of Herberton Road circa 26m to the north of the appeal site and it is separated from the northern boundary of the site by 'Thistle House', a detached dwelling dating to mid Twentieth Century', the access road as well as building and spaces associated with the Glenview Industrial Estate. These adjoining and neighbouring lands are also zoned 'Z10' under the current Development Plan which as mentioned previously in this report has a stated objective: *"to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses"*.
- 7.3.6. I am cognisant from the examination of the planning history for this contended precedent case that the development sought under ABP-312300-12 consisted of the demolition of existing buildings on site, which I note included but was not limited to a three-storey brick building that fronted Herberton Road, and the construction of 137 build-to-rent apartments together with their associated site works with in total 6 separate blocks proposed on this site given area of c 0.7654-hectares. The heights of these blocks ranged from 2 to 8 storeys in height.
- 7.3.7. I note that the Board considered this application when the previous Development Plan was operational. With this previous Development Plan having been subject to Variation No. 22, which was made by the City Council on 10th March 2020, which changed the land use zoning objective of the subject site and adjoining lands including the site subject to this current appeal case at Herberton Road, Keeper Road and including the Glenview Industrial Estate lands from 'Z6' to 'Z10'.
- 7.3.8. The 'Z10' land use zoning, its objectives, purpose, and vision for these lands has been carried through to the current Development Plan.

- 7.3.9. Whilst this previously determined appeal case is relatively recent in terms of being determined by the Board, the current Development Plan includes more robust and up to date policy provisions, guidance and other considerations that are relevant for the type of development sought under this application. With this current Development Plan aligning itself with the changed regional and national planning policy provisions that have occurred over the time that the previous Development Plan was operative. It is also the case that since the current Development Plan has been adopted there have also been amendments made to national planning provisions including for example the Section 28 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities which were updated most recently in July 2023.
- 7.3.10. Alongside the changed planning policy context, the two sites though sharing the same 'Z10' land use zoning are quite different with the subject site being of a size for which the preparation of a Masterplan is not for example required. Additionally, the locational factors of the site are also different with this site being bound by more sensitive to change residentially zoned land on its southern boundary. This is in addition to its more substantial in length roadside frontage along Herberton Road with 'Z1' zoned land on the opposite side.
- 7.3.11. Additionally, the site is quite an irregular shaped site with a more central location along the western roadside of Herberton Road. As opposed to the contended precedent site which has a more modest c20m setback from the heavily trafficked Dolphin Road and Herberton Road junction.
- 7.3.12. At this location arguably the larger G4S site has the capacity to accommodate taller buildings and with a larger site area has the capacity to accommodate a larger mixture of land use than the mono-use residential development sought. Such a monotype development is not one as discussed is supported under the Development Plan for 'Z10' zoned land.
- 7.3.13. The two sites and the types of developments sought under this planning application now before the Board for its determination and that considered by the Board under ABP-312300-21 are not comparable in my view.



- 7.3.14. The G4S site as set out in the planning history section of this report is now subject to a concurrent mixed use planning application that is currently with the Planning Authority for its determination (Note: P.A. Ref. No. LRD6020/23-S3).
- 7.3.15. Having regards to the above considerations together with the fact that each application/appeal should be assessed on its own individual merits against current relevant planning policy provisions and guidance I do not concur with the Third-Party arguments that the proposed development as revised warrants refusal for the reasons and considerations given by the Board for appeal case ABP-312300-21.

#### **7.4. Amenity Impact**

- 7.4.1. The Third-Party Appellant raises concerns that the proposed development if it were to be permitted as revised would give rise to serious injury of their established residential and visual amenity. I do not consider that these are unreasonable concerns given the locational context of this brownfield infill urban site together with the established pattern of land use that results in this site being part of a setting with a transitional character and land use function. With this being most evident by Herberton Road being a physical barrier that separates the south eastern end of a parcel of 'Z10' zoned land which is currently characterised by a mixture of mainly industrial, warehouse and commercial type developments with the established low density and low scale residential on its opposite side as well as its southern boundary.
- 7.4.2. Additionally, a neighbouring parcel of land, i.e., accommodates a circa 1950s detached dwelling (Thistle House) that addresses the western side of Herberton Road, in close proximity to the northernmost boundary of the site. This existing dwelling forms part of the 'Z10' land use zone, is bound by the vacant G4S site on its northern side and is within circa 6.5m of the northern boundary of the site at its closest point.
- 7.4.3. The current context of Thistle House is that it occupies a constrained site area relative to other similar two-storey dwellings that front Herberton Road. I consider it is likely that historically it occupied a larger in area site curtilage that included part of what now forms the associated spaces of the adjoining Glenview Industrial Estate. There is a modest lateral separation distance between its rear façade and its rear boundary which adjoins Glenview Industrial Estate. Based on OSI Maps this distance ranges from just over 3m to over 5m. This a modest in depth private open space which is somewhat compensated for its circa 10m width together with this dwelling have a

semi-private open space area in its setback area from Herberton Road. Despite the setback of the two-storey main envelope of Thistle House from its southern boundary by a single storey attached garage, given the orientation of private open space, its relationship with man-made and natural features as well as structures through to its spatial layout it is likely that this space suffers from overshadowing. I also note that there appears to be over 18m separation distance between the first-floor rear elevation and the first-floor level of the nearest Glenview Industrial Estate building to the west which includes a number of transparent glazed window units at first floor level. As such the private open space of Thistle House is also overlooked. The level of overlooking and overshadowing is not out of context with this property's urban location and how it has developed as well as changed over time.

- 7.4.4. In relation to the residential properties on the opposite side of Herberton Road the existing nature of development on the subject site does not give rise to any undue overshadowing or overlooking. This is the case also for the adjoining semi-detached pair to the south (No.s 43 and 45 Herberton Road). With this being based on the low site coverage of existing buildings and structures on site as well as the fact that the most substantive structure on site is set back from all boundaries and is not of a significant height given that it accommodates essentially a commercial warehouse building for the sale of vehicles, vehicle service area through to sundry spaces largely accommodated in a building that is not incomparable to a two storey residential property in its setting.
- 7.4.5. Given the existing context I consider that the residential properties to the north, east and south of the site are particularly sensitive to change from any form of substantive redevelopment of the subject site, particular in a manner that seeks to accord with the 'Z10' land use zoning, local through to national planning policy provisions as well as guidance for this land which seeks compact growth and more efficient higher density sustainable developments at accessible and serviced urban locations like this. It is therefore reasonable for property owners in the vicinity to seek that an appropriate balance is demonstrated between safeguarding their established amenities and allowing the envisaged change for 'Z10' zoned land. It is also reasonable to ensure that the redevelopment of this site does not detract from the visual amenities of its setting but rather puts forward a high quality built and landscaped response that

contributes to healthy place-making alongside sets a positive precedent for other future redevelopment of this parcel of 'Z10' zoned land.

- 7.4.6. There are several concerns raised by the Third Party in relation to the proposed development as revised. The substantive concerns are the visual overbearance of the proposed taller building of more significant volume and mass which they contend is inadequately setback from the site boundaries, in particular from residential properties in its immediate vicinity. Alongside concerns that the proposed mixed-use building, if permitted, as revised would give rise to undue overlooking, diminishment of sunlight/daylight as well as increased levels of overshadowing of residential properties in its vicinity.
- 7.4.7. An additional concern is raised that the adverse amenity impacts that would arise from the proposed development are such that they would give rise to devaluation of residential properties in the vicinity of the development through to for properties who have solar panels in its vicinity would have the efficiency of these diminished by the increased levels of overshadowing that would also arise.
- 7.4.8. They contend that the amended design permitted by the Planning Authority whilst giving rise to modest improvements has not substantially overcome their concerns. They also consider that the proposed building is of a design, height, scale, mass, and volume that is incongruous and at odds with the character of Herberton Road.
- 7.4.9. As a result of these amenity impacts, they contend that the proposed development as revised is inconsistent with local through to national planning policy provisions and guidance with this in itself to warrant a refusal of permission.
- 7.4.10. The Planning Authority and the First Party on the other hand whilst accepting that the proposed development would give rise to a change in the context for residential properties in the vicinity of the site and the visual amenities of the area, including the streetscape scene of Herberton Road, notwithstanding it would not in their view be such that would substantiate refusal on residential and/or visual amenity impacts. In their view the proposed development would not give rise to residential amenity impact that would be significant and out of context with that to be expected within such an urban setting. Moreover, they consider that the proposed development would positively impact to the visual amenities of its setting by way of the high-quality architectural response for the building and its associated spaces, including improved

public realm, which together with the provision of a diversity of uses that would add to vibrancy as well as vitality of Herberton Road's streetscape scene. As such they are of the view that the proposed development is consistent with the planned emerging character of development sought for this urban location and that the proposed development achieves a reasonable balance between the protection of amenities vulnerable to change.

7.4.11. I therefore propose to examine the amenity concerns separately under the following headings:

- Overbearing
- Daylight, Sunlight and Overshadowing
- Overlooking
- Devaluation of Property Values
- Design

7.4.12. **Overbearing**

7.4.13. The Third Party's in this appeal raise concerns that the proposed development would be visually incongruous, overbearing and out-of-context with its setting. Particularly when regard is had to the visual juxtaposition and relationship that would arise from height, scale and design of the proposed 5-storey mixed use building as revised in comparison with the two-storey height and low scale nature of development that characterises existing development on the surrounding lands.

7.4.14. In relation to this particular concern the First Party whilst accepting that the proposed development represents a departure from the height, scale, volume, and nature of built form in its setting, contend that it accords with the provisions set out in the Development Plan for 'Z10' zoned land which envisages taller and higher density built forms that would in time complement and reinforce the changing nature of this urban neighbourhood.

7.4.15. As part of supporting this contention their further information response includes photomontages of three viewpoints.

7.4.16. I note that View Point 1 depicts a location on the south western corner of Herberton Roads junction with Dolphin Roads showing a southerly view; View Point 2 depicts a

location at the junction of Herberton Drive in a north westerly direction towards Herberton Road and the site; and View Point 3 depicting a location on the eastern side of the junction where Herberton Road meets Keepers Road. I further note that the purpose of these three viewpoints as set out in the Planning Authority's further information request was to examine the existing and proposed outcome of the revised proposal in relation to its surrounding context.

- 7.4.17. In relation to the photomontages provided by the applicant as part of their further information response I share the concerns of the Third Party in terms of their accuracy in depicting the proposed outcome of the revised building in its urban landscape context.
- 7.4.18. On this point, I question that the proposed outcome as depicted in these three views provides an accurate and robust representation of the actual scale, height, massing through to volume of the proposed mixed use building from a limited number of viewpoints. This is on the basis that provide no evidence that indicate for example that they provide a correct geospatial insertion and accurate scaled 3D models were used in creating them against baseline photographs.
- 7.4.19. In addition, I note that the photomontages provided by the applicant also do not include a depiction of a time of year where the deciduous trees that are the prevalent mature natural feature within the surrounding area have lost their leaves. With the depicted outcome depicting a point of the year when these natural features have fully leafed canopies. This is particularly of note in terms of the photomontage view selected to illustrate the outcome when viewed from Herberton Roads junction with heavily trafficked Dolphin Road. A junction which includes a bridge crossing of the Grand Canal with views from this bridge to Herberton Road.
- 7.4.20. I therefore raise it as a concern that the selected view point chosen from the Herberton Road and Dolphin Road junction together with a photomontage perspective that depicts a time of year when the mature trees to the north and north east of the site are in full leaf is one benefits from the maximum visual screening that would arise from these natural features on the proposed revised building. It is a further concern that no view point is given from where in this junction the subject site and buildings thereon would be more visible. Moreover, it is unclear from the photomontages provided how accurate the representation of the proposed revised building is given as there is no

explanation given to support accuracies of scale and perspective views from the viewpoints chosen.

- 7.4.21. I am not satisfied that the photomontages for the reasons given above are satisfactory in terms of demonstrating accurately and robustly the potential outcome of the proposed building as revised.
- 7.4.22. In relation to the Development Plan provisions, Appendix 3 is of relevance as part of examining the overbearance of the proposed mixed use building as revised. In this regard, as noted previously in this assessment I consider that the prevailing height of the surrounding area is two storeys, and the prevailing scale of development is low rise. This is despite the presence of three storey brick addition at the G4S site and the large industrial, commercial through to warehouse typology of buildings that characterise the Glenview Industrial Estate.
- 7.4.23. The proposed five storey building mixed use building as revised has a given maximum height of 17.35m. I therefore consider that having regards to the existing surrounding built forms that it would be reasonable to consider the proposed revised building as a locally taller building. With this based on the material difference in building height between the prevailing two-storey built forms and the proposed five-storey building as sought by way of the further information's revised design.
- 7.4.24. In this case there would be circa 6.9m height difference between the proposed building and the maximum ridge height of the adjoining semi-detached Victorian dwelling to the south (Note: No. 45 Herberton Road). Additionally, there would be circa 8.12m height distance between the proposed building and the average maximum height of dwellings on the opposite side of Herberton Road through to in relation to Thistle House a difference in height of circa 8.65m.
- 7.4.25. I consider that these adjoining and neighbouring dwellings to the north and south of the site characterise the building height of residential buildings that form part of the site's visual setting. With, as said, the industrial and warehousing buildings including the three-storey built form office structure associated with the G4S site earmarked for rejuvenation and regeneration by way of its 'Z10' land use zoning. Whereas outside of Thistle House the adjoining and neighbouring properties to the south and east in the immediate site context occupy more restricted in size plots that are residentially zoned 'Z1' (Note: *"to protect, provide and improve residential amenities"*).

- 7.4.26. I note that Section 3 of Appendix 3 of the Development Plan states that: *“the key factors that will determine height will be the impact on adjacent residential amenities, the proportions of the building in relation to the street, the creation of appropriate enclosure and surveillance, the provision of active ground floor uses and a legible, permeable and sustainable layout”*. With Section 4.1. of Appendix 3 on the matter of building height stating that: *“the general principle is to support increased height and higher density schemes in the city centre, Strategic Development Regeneration Areas, Key Urban Villages, areas close to high frequency public transport and some other areas (as identified) considered as suitable for increased intensity of development”*.
- 7.4.27. As previously noted in this assessment the density and the site coverage accord with that generally deemed to be acceptable under the Development Plan in this serviced and accessible urban location that in itself is within easy reach of Dublin’s city centre.
- 7.4.28. The site itself is outside of a Strategic Development Regeneration Area and it is 100m remote from the Grand Canal.
- 7.4.29. It is not a location identified for taller or landmark buildings. Notwithstanding, it is located on former ‘Z6’ zoned lands with Section 4.1 of the Development Plan considering that these sites are strategically located in the city and have potential for significant intensification. It also sets out that in general building heights of between four and six storeys are supported under the Development Plan at these locations. With this supported subject to the performance criteria set out in Table 3 being demonstrated and subject to where such sites abut existing lower density residential areas. In the latter circumstance an appropriate transition of scale and separation distances must be provided in the design and layout of developments that include taller buildings as one of the measures to protect residential and visual amenities.
- 7.4.30. My assessment of the proposed development against the criteria set out in Table 3 is set out below:

|    | Objective   | Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale   |
|----|---|--|
| 1. | To promote development with a sense of place and character. | <p>The proposed development meets this objective:</p> <ul style="list-style-type: none"> <li>The subject scheme includes a setback of between 14m to 15m between the proposed mixed-use building and the nearest adjoining residential property on ‘Z1’ zoned land with natural features also proposed as part of the landscaping scheme within this setback. This lateral separation together with the</li> </ul> |

|    |                                       |  |
|----|---------------------------------------|--|
|    |                                       | <p>natural features existing and proposed together with the palette of external materials, finishes and treatment respect and harmonise in a contemporary manner with its setting whilst providing a high-quality architectural resolution that is of its time that would create an appropriate bookend to the southernmost parcel of 'Z10' zoned lands fronting Herberton Road.</p> <ul style="list-style-type: none"> <li>• The proposed scheme provides a positive transition as well as graduation in building height against existing adjoining and neighbouring properties on both 'Z1' and 'Z10' zoned land in its vicinity.</li> <li>• The specimen tree planting along the roadside frontage (Herberton Road) would positively contribute towards the visual amenities of the area and in time these natural features would contribute to the biodiversity in this urban landscape alongside would contribute to sustainable capturing of surface water run-off. Together with existing mature natural features of merit the additional tree planting would provide a more consistent approach to tree planting within the public domain along the western side of Herberton Road.</li> <li>• The proposed development would give rise to an improved public domain by way of increasing the width of the public footpath along its roadside frontage with Herberton Road. This would improve accessibility of Herberton Road for pedestrians at this point. It would also give rise to improved space around the bus stop situated on the adjoining public domain with the current footpath width being constrained. In time the improved width of the public domain in the vicinity of the relocated bus stop could accommodate improvements by utilising this space to provide a bus shelter.</li> <li>• The proposed development would give rise to greater activity and land use intensity along the streetscape scene of Herberton Road as well as in its immediate vicinity. This would contribute to the overall vitality and vibrancy of this urban area. Alongside give rise to a variety of other land uses like the proposed supermarket that would be accessible to the large residential population in the hinterland of the site, with the proposed mixed building being a visual focal point due to it contrasting in height, mass, volume, and the like with the more residential character that predominates Herberton Road.</li> </ul> |
| 2. | To provide appropriate legibility     | <p>The proposed development meets this objective by reflecting the objectives for 'Z10' land. The mixed-use and more compact character of the proposed development relative to existing development would result in coherent response in terms of buildings and spaces including the provision of a potential link to the 'Z10' zoned land to the west by way of including provision for a future 3m link between Herberton Road and this adjoining with latent potential for redevelopment land.</p>  |
| 3. | To provide appropriate continuity and | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>• The eastern façade provides in its height and width appropriate as well as legible of its time architectural built</li> </ul>  |



|    |  |   |
|----|--|---|
|    | <b>enclosure of streets and space</b>  | <p>continuity and enclose of the western side of Herberton Road. With the setback including new street tree planting linking with the street tree planting to the north of the site as well as in time visually softening the appearance of the proposed buildings increased height, mass, volume, and width.</p> <ul style="list-style-type: none"> <li>• The design and layout would give rise to increased width of the public footpath which would in turn with the additional tree planting result in a more qualitative public realm along the adjoining stretch of Herberton Road.</li> <li>• The design with its qualitative use of external materials together with the level of glazing which lightens the overall appearance of the Herberton Road façade in a coherent manner.</li> <li>• The design provides passive surveillance and active uses that would result in safer, animated, and improved visual address to Herberton Road.</li> </ul>  |
| 4. | <b>To provide well connected, high quality and active public and communal spaces</b> | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>• This location is highly accessible with several bus routes within easy walking distance of the site, a Luas Stop also within 550m walking distance of the site and it is situated circa just over 3km to Dublin's city centre as well as a number of employment hubs.</li> <li>• The design prioritises pedestrians, cyclists and public transport whilst limiting the provision of car parking spaces. Thus, reducing the potential adverse impacts arising between vehicles traffic including in terms of the volumes of vehicles accessing and egressing the proposed mixed-use scheme.</li> <li>• The design seeks to ensure adequate sunlight and daylight penetration to public spaces and communal areas within the scheme. With the setback of the building to the south and to west improving light penetration into the site whilst seeking to limit overshadowing of the Herberton Road public domain.</li> <li>• The design provides for people friendly streets and spaces and prioritise street accessibility for persons with a disability.</li> </ul> |
| 5. | <b>To provide high quality, attractive and useable private spaces.</b>               | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>• High quality private outdoor space that are usable, safe through to accessible are proposed.</li> <li>• The design seeks to ensure that the dwelling units proposed receive the required standard of natural light, particularly to their private amenity spaces.</li> <li>• The proposed development is designed, laid out and of a scale that it would not give rise to any undue microclimatic effects or negative impacts on its future occupants or on properties in its vicinity.</li> </ul>  |

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|----|---|--|
|    |   | <ul style="list-style-type: none"> <li>The design seeks to provide levels of privacy that is not out of character with that which can be achieved in an urban setting by way of appropriate mitigation, design, and layout measures.</li> </ul>  |
| 6. | <b>To promote mix of use and diversity of activities</b>                | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>Promoting the delivery of a mixed-use development scheme with its three retail units being yet to have an end user and being suitable to a variety of land uses that would further add to the diversity of uses within this scheme and area.</li> <li>The proposed development would contribute positively to the formation of a 'sustainable urban neighbourhood' by increasing the presence of other land uses that are synergistic to residential including the proposed discount food supermarket proposed. With the nearest such use located over 1km away in what is populated and growing urban area.</li> <li>The proposed development would add to the mix of dwelling typologies in an urban neighbourhood where the immediate context is low scale 3-to-4-bedroom terrace, semi-detached through to detached type dwellings.</li> </ul>   |
| 7. | <b>To ensure high quality and environmentally sustainable buildings</b> | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>The building has been modulated and orientated to maximise access to natural daylight, ventilation, privacy, noise, and views to minimise overshadowing and loss of light on properties vulnerable to change in a manner that accords with Appendix 16 of the Development Plan.</li> <li>The design of the building ensures a degree of physical building adaptability as well as internal flexibility in design and layout particularly for the retail/commercial element.</li> <li>The design has sought to minimise plant at roof level.</li> <li>The number of dual aspect dwelling units are consistent with the standards for this urban location.</li> <li>The design optimises passive solar gain and achieves good cross ventilation.</li> <li>The external envelope consists of high-quality materials and the building includes robust construction methodologies.</li> <li>The envelope of the mixed-use building incorporates sustainable technologies, be energy efficient and climate resilient. With this including pv panels at roof level.</li> <li>The design solutions include Integrated Surface Water Management Strategy.</li> <li>A flood risk assessment has been prepared and this has informed the design so that the proposed development, if permitted, does not give rise to any increased risk of flooding. It also includes measures to protect ground floor level uses from adverse flooding events.</li> </ul> |

|     |  |   |
|-----|--|---|
|     |  | <ul style="list-style-type: none"> <li>The documentation supports that cognisance was had in the design of the proposed mixed use building to the embodied energy impact of the proposed development.</li> </ul>  |
| 8.  | <b>To secure sustainable density, intensity at locations of high accessibility</b> | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>The site is well served by public transport with high-capacity frequent service with good links to other modes of public transport in the wider urban area so that future occupants and users of this mixed-use building are not reliant on private car ownership. In addition, the retail element is highly accessible to established residential development in the surrounding area as well as that anticipated as part of the redevelopment of neighbouring 'Z10' zoned lands.</li> <li>The design has sought to maximise the development footprint on this serviced site whilst accommodating access, servicing, and parking in the most efficient ways possible.</li> </ul> |
| 9.  | <b>To protect historic environments from insensitive development</b>               | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>The site does not form part of nor is it in the immediate vicinity of a Protected Structure, Architectural Conservation Areas and/or National Monuments. Precautionary measures are proposed to safeguard any hidden archaeological material that be present below grade in a manner consistent with best practices and guidance on such matters.</li> </ul>  |
| 10. | <b>To ensure appropriate management and maintenance</b>                            | <p>The proposed development meets this objective by:</p> <ul style="list-style-type: none"> <li>The documentation included provides appropriate information on matters relating to management of public/communal areas, waste management, servicing and the like. Finalisation of the management and maintenance of the proposed development, if permitted, could be adequately dealt with by way of standard conditions.</li> </ul>  |

7.4.32. The proposed development as set out in the table above achieves consistency with the performance criteria set out under Table 3 of the Development Plan.

7.4.33. In terms of the neighbouring property to the north, this property is separated by an access road serving Third Party warehouse buildings located to the rear of it. The proposed building at its nearest point would be 10.5m from this building's main two-storey built form. The proposed building along its northern end is legible as four storeys with the fifth-floor level accommodating a pent house that is setback from the northern as well as western main elevations. The fifth-floor level having regard to the

change in topography is c17.2m height and the four-storey element is c13.62m at this point. Whereas the ridge height of Thistle House is just over 8m.

- 7.4.34. Additionally, the building is designed to have a central landscaped area that has a north to south axis extending centrally through the building. This central landscaped area provides a c19m lateral separation distance between the eastern and western portion of this mixed-use building which accommodates the main residential component. This podium level roof garden commences at c11m in height. The easternmost component which at its northern most end has a width of c15.9m adjoining this roof garden. The westernmost component has a four-storey maximum height of 17.2m and a width of c18.7m redevelopment. Together with its landscaping which would further soften the building in time as viewed from its setting this element breaks up the visual massing, scale and volume of the proposed mixed-use building whilst achieving an efficient use of the site area. The view of the proposed building is further added to by the improved quality of its external envelope materials, the solid to void treatment through to the reduction in unnecessary signage.
- 7.4.35. These features not only result in improved positive contribution to the visual amenities of Herberton Road's streetscape scene when viewed from the public domain but also the provision of a podium level roof garden with the c19m separation between it and the upper floor levels to the west and east of it improves the visual and residential amenity impacts of this building in relation to the adjoining residential property to the south and also Thistle House to the north.
- 7.4.36. Further improvements arise from the increased setback of the building frontage from Herberton Road, and its eastern elevation is modulated so that it forms a strong coherent street frontage with the penthouse level setback at fifth floor level. The latter also reduces the visual apparentness and overtness of the proposed building's five storey height, particularly relative to the two-storey modest in scale and height residential properties on the opposite side of Herberton Road. It also reduces the level of overshadowing of these properties, the semi-private domain around this building and the public domain of Herberton Road.
- 7.4.37. I am therefore of the opinion that the revised mixed use building sought under this application, should the Board be minded to grant permission, subject to standard conditions including but not limited to agreement of the palette of materials, qualitative

treatment of boundaries and landscaping, the qualitative public and semi-public domain treatments through to controls on signage and lighting, would not be overbearing or visually incongruous within its streetscape scene or within its urban neighbourhood setting. Moreover, I consider that the proposed five storey building as revised achieves an appropriate graduation of height and built form relative to its nearest sensitive to change properties due to its modulation of building height, massing, scale, and volume through to providing appropriate levels of setback from private and public domain. Overall, I am satisfied that the proposed building if permitted would not warrant refusal of permission based on undue visual overbearance, dominance or other adverse visual amenity outcome on its setting.

7.4.38. Daylight, Sunlight and Overshadowing

7.4.39. The Third-Party Appellant raise concerns that the proposed development as granted would diminish their residential amenities by way of reducing daylight and sunlight as well as in turn would give rise to undue overshadowing to their properties.

7.4.40. The Urban Development and Building Height Guidelines indicate that form, massing, and height of proposed developments should be carefully modulated to maximise access to natural daylight, minimise overshadowing and loss of light. The Guidelines state that “*appropriate and reasonable regard*” should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE (BR 209) ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’.

7.4.41. Building on this Section 6.6 of the Sustainable Urban Housing Design Standards for New Apartments Guidelines, as more recently amended, state that Planning Authorities should: “*have regard to quantitative performance approaches to daylight provision outlined in guides like ‘A New European Standard for Daylighting in Buildings IS EN17037:2018, UK National Annex BS EN17037:2019 and the associated BRE Guide 209 2022 Edition (June 2022)’*”. In addition, where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and

the balancing of that assessment against the desirability of achieving wider planning objectives.

- 7.4.42. Additionally, the Sustainable Residential Development and Compact Settlement Guidelines under Section 3.4.2 which sets out considerations of character, amenity and the natural environment indicate that new developments should respond to and evaluate of impact on local character. Including under Step 2 (b) it states that it will be: *“necessary to consider the impact of a proposed development on the amenities of residential properties that are in close proximity to a development site. The key considerations should include privacy, daylight and sunlight, and microclimate”*. These particular matters are considered in more detail under Chapter 5 of the said Guidelines with Section 5.3.7 stating that: *“the provision of acceptable levels of daylight in new residential developments is an important planning consideration, in the interests of ensuring a high quality living environment for future residents. It is also important to safeguard against a detrimental impact on the amenity of other sensitive occupiers of adjacent properties”*.
- 7.4.43. It indicates that in cases where a technical assessment of daylight performance is considered by the planning authority to be necessary regard should be had to quantitative performance approaches to daylight provision outlined in guides like A New European Standard for Daylighting in Buildings IS EN17037:2018, UK National Annex BS EN17037:2019 and the associated BRE Guide 209 2022 Edition (June 2022), or any relevant future standards or guidance specific to the Irish context.
- 7.4.44. In addition to the above I note Section 15.9.16.1 of the Development Plan it recognises that good daylight and sunlight contribute to making a building energy-efficient; it reduces the need for electric lighting, while winter solar gain can reduce heating requirements. It also recognises that: *“daylight animates an interior and makes it attractive and interesting, as well as providing light to work or read by”* and that best practice guide for the assessment and methodology of Daylight and Sunlight Assessments is set out in Appendix 16.
- 7.4.45. Further to these provisions Section 7 of Appendix 16 of the Development Plan sets out that when reviewing the results of new residential developments that the Planning Authority will apply rationale and reason on a case-by-case basis.

- 7.4.46. The example given is that a high-density apartment development in the city centre will have a different expectation from an apartment development in the suburbs and that the levels of daylight and sunlight availability will vary in line with both the site coverage, development height and density.
- 7.4.47. It states: *“there will be a general presumption against schemes where units fall below these minimum standards and it is the expectation of the planning authority that a significant proportion of units should exceed the minimum standard in order to ensure high quality sustainable developments”* and that: *“in exceptional circumstances ... where these minimum criteria cannot be achieved, the applicant should very clearly identify this and put forward a clear and robust rationale for compensatory measures applied to mitigate any shortfall in the minimum standards. From here, the planning authority will apply an exercise in discretion and balance that considers the wider impact of the development beyond matters relating to daylight and sunlight”*.
- 7.4.48. I note that the proposed development on foot of the Planning Authority’s further information response reduced the height of the proposed mixed use building from six storeys to five storeys in height alongside it included an amended Sunlight, Daylight and Shadow Assessment. These changes sought to overcome the various concerns raised by the Planning Authority on the matter of sunlight, daylight and shadow impacts for future occupants but also impact on properties in the vicinity of the proposed development.
- 7.4.49. The revised assessment had regard to the updated guidance on such matters. In particular the ‘Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice’ Third Edition (BRE, 2022) which includes references to Target Illuminance and EN 17037 against the revised buildings reduced height, built form through to reduced number of apartment units.
- 7.4.50. In relation to the proposed dwelling units, in examining Target Illuminance it was found that 100% of the rooms complied with the BS/EN 17037 Annex NA room targets for 50% of the floor area tested with the average complaint areas achieving the relevant Lx for all bedrooms (Note: 99%) and all Living/Kitchen spaces (Note: 71%). As such both were more than the required 50%. It was also found that in examining Average Daylight Factors (ADF) for tested rooms that 100% of all rooms on all floors comply with relevant requirements and that the average (ADF) for the tested living rooms is

3.7% and for bedrooms 6.4%. Thus, complying with the requirements of the BRE guidelines for ADF light distribution.

- 7.4.51. In relation to impact on surrounding neighbouring the potential impact of the proposed development examined the impact to existing facing windows in terms of impact/change for skylight – vertical sky component (VSC); the impact/change for Probable Sunlight Hours – Annual APSH and Winter WPSH; and, existing amenity spaces for impact/change on Sunlight/Shadow.
- 7.4.52. As part of this examination a 3D model was generated. This model was based on survey of built structures existing on site and on neighbouring surrounding land against the proposed development as revised. This model excluded natural features. In this regard I note significant mature trees present on the site to the south as well as two significant deciduous street trees present alongside and in proximity to the north eastern most corner of the site. The model was according to the authors based on the 3D model prepared by the architects with this model also having been geo-referenced to its correct location onto which an accurate solar daylight system was introduced.
- 7.4.53. It was found that when the property to the south was tested that 100% of the windows complied with the 27%, 0.8 ratio requirements for habitable rooms with the average change ratio for VSC being 0.94.
- 7.4.54. In addition, 100% of the tested windows complied with the Annual Probable Sunlight Hours and Winter Probable Sunlight Hours requirements for sunlight. With the average change ratio for sunlight being APSH 1.00 and WPSH 1.00.
- 7.4.55. As such it was found the proposed development as revised complies with relevant requirements in relation to skylight availability for neighbours to the south.
- 7.4.56. Furthermore, in relation to overshadowing it was found that the properties to the south would receive 2 hours of sunlight on the 21<sup>st</sup> of March. It was therefore concluded that in terms of this adjoining residential property that the proposed development meets the relevant requirements in relation to skylight availability.
- 7.4.57. This report concluded that 100% of the tested neighbouring amenity spaces pass the BRE 2-hour sunlight on the 21<sup>st</sup> of March or 0.8 ratio requirement with the average change ratio for the tested amenity spaces being 1.00. As such it was considered that the proposed development as revised complied with the requirements of the BRE



guidelines for impact on amenity in terms of sunlight and shadow. Additionally, it was considered that the potential impact of the proposed development on neighbours complies with the requirements of 'Site Layout Planning for Daylight and Sunlight a Guide to Good Practice (BR209-2022)'.

- 7.4.58. Of concern this amended revised Sunlight, Daylight and Shadow Assessment fails to robustly examine the surrounding properties to the west, north and east of the site. With the residential dwelling of Thistle House and the residential properties to the east and north east on the opposite side of Herberton Road. This is also not robustly examined in the original Sunlight, Daylight and Shadow Assessment provided with the original submission as lodged to the Planning Authority.
- 7.4.59. As part of the First Party's response to the grounds of appeal they include additional comments from the author of both Sunlight, Daylight and Shadow Assessments accompanying this application. I note that the format of these comments follows the same approach for assessing the potential impact of the proposed development on existing neighbours with the adjacent properties to the east on Herberton Road being assessed for impact/change for skylight – VSC; impact/change for APSH; and, impact/shadow as provided for in their previous report.
- 7.4.60. It would appear that properties to the north of No. 62 Herberton Road are excluded from this study yet this stated property is not the only two-storey property situated to the immediate east of the site's roadside frontage with Herberton Road.
- 7.4.61. Of further concern are the properties to the north east of the proposed building and No.s 46 to 52 Herberton Road that are also either directly to the east on the opposite side of Herberton Road and/or near the south east on the opposite side of Herberton Road.
- 7.4.62. It was noted in the submission comments provided to the Board that as no BRE impact would occur to the rear of these properties in terms of overshadowing of their rear private amenity space that these were not examined. The additionally examination also included Thistle House to the north's rear private amenity space.
- 7.4.63. In relation to the additional properties tested on the opposite side of Herberton Road it was found that a few of the ground floor windows would fall below the VSC requirement of 27%. Where this occurred, the ranges were between 25.1% to 25.8%.

- 7.4.64. Essentially all 8 properties that were tested it was found that a minor adverse impact would arise in terms of diminishment of sunlight to ground floor windows addressing Herberton Road.
- 7.4.65. It was acknowledged that at present given the current development on the site that there is little to no vertical building development with the scale of development being inconsistent with other commercial developments in the area. It is argued that whilst 65% of tested windows comply with the 27% as well as 0.8 ratio requirement for habitable rooms, however, the windows tested below this in their view largely reflect the existing situation where there is no vertical development existing on the site within the baseline condition. It is further argued that for a commercial site the existing use of the site represents its underdevelopment and that the arising impact from the revised proposal give rise to only impacts only marginally below the ratio of 0.77 requirements.
- 7.4.66. In addition, it was found that 100% of tested windows complied with the annual APSH and 95% with the winter WPSH requirements for sunlight or overall requirement. With one of the windows that has low access to light already impacted by an existing front porch extension (Note: Window 2.0.2).
- 7.4.67. As such it is concluded that the proposed development generally complies with the requirements of the BRE guidelines for the annual and winter sunlight availability to neighbouring properties to the east of it on Herberton Road.
- 7.4.68. In relation to Thistle House, it was found that the BRE 2 hours of sunlight on the 21<sup>st</sup> of March or 0.8% ratio requirement is achieved and that the geometric shape of this property when taken together with its orientation means that sunlight can only enter from the south. This they contend results in disproportionate impact on this space. With the daylighting and shadowing to this property also impacted in their view by the barriers/fenced placed on top of its perimeter walls for privacy. In relation to the latter, it is stated that these additions were not included in their assessment. A low 11% result was found in their examination for the 21<sup>st</sup> of March. However, it was contended that when the same metric is applied on the 21<sup>st</sup> of April that sunlight will penetrate to the space to the rear of this property with a 62% pass on the 2-hour metric.
- 7.4.69. The accompanying First Party response considers that any development of this site will give rise to neighbouring windows and amenity spaces being impacted by a level

of diminished daylight and additional overshadowing that they contend is not significant or out of context with the site setting through to the zoning provisions that include Thistle House being encompassed by the 'Z10' land use zoning under the Development Plan.

7.4.70. While I consider that the sunlight, daylight as well as overshadowing that would arise for future occupants of this mixed-use scheme are within required standards with this including the communal open spaces; notwithstanding, there will be a modest impact in sunlight and daylight penetration to the ground floor levels of adjoining properties to the east on Herberton Road as well as a more significant impact to sunlight and daylight penetration to the rear of Thistle House. In addition, there will be more significant overshadowing arising to this property's private amenity space provision.

7.4.71. Notwithstanding, local through to national development planning policy provisions and guidance provide flexibility allowing for this matter to be assessed on a case-by-case basis in relation to relevant standards and guidance. In this regard I acknowledge that the current accepted relevant standards and guidance, for example the BRE recommendations are not fully met. However, having regard to the 'Z10' land use zoning of the site, the orientation of the site; the lateral separation distance between the proposed building and existing surrounding properties; the fact that Thistle House forms part of a larger parcel of 'Z10' zoned land that extends to encompass the adjoining access road and this subject site to the south of it and the warehouse/industrial type development to the west and north of it through to continuing northwards on the western side of Herberton Road to include the vacant 'G4S' site. With as previously note this site currently subject to redevelopment application for taller mixed-use buildings of larger building formats with the Planning Authority for its determination. When taken together with the emerging pattern of development envisaged for 'Z10' zoned land the low scale two storey nature of Thistle House is at odds with the land use objective for these lands. Additionally, there is also latent potential for the lands between Thistle House and to the rear of this property to in time being similarly developed in time.

7.4.72. I am cognisance that Chapter 5 of the Sustainable Residential and Compact Settlement Guidelines state that: *"in drawing conclusions in relation to daylight performance, planning authorities must weigh up the overall quality of the design and layout of the scheme and the measures proposed to maximise daylight provision,*

*against the location of the site and the general presumption in favour of increased scales of urban residential development. Poor performance may arise due to design constraints associated with the site or location and there is a need to balance that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution”.*

7.4.73. Having regard to the above, despite the fact that there are incidents where the proposed development fails to meet the accepted best practice standards on daylight, sunlight and overshadowing, I consider that the height, modulation, mass, volume through to the separation distances from boundaries including from residential properties sensitive to change when taken together with the orientation, proposed and existing natural as well as man-made built features achieves a reasonable balance in terms of existing and proposed amenity impacts in the context of this transitional ‘Z10’ redevelopment of this transitional ‘Z10’ zoned site for which the Development Plan seeks to secure comprehensive urban regeneration in a manner that accords with relevant planning policy provisions and guidance. For these reasons, the proposed development I consider that the impacts that would arise for properties in the vicinity of the site are in context with this urban location and envisaged emerging pattern of more compact and denser redevelopment which includes the provision of taller buildings.

7.4.74. Overlooking

7.4.75. Given the locational context of the site, the orientation of existing and proposed development, together with the design rationale proposed, which includes for extensive setbacks and separation distances that accord with Section 5.3.1 of the Sustainable Residential and Compact Settlement Guidelines and its SPPR 1.

7.4.76. These recently adopted guidelines in relation to the requirement for a minimum separation distance of 22 metres between opposing upper floor windows that has formed part of the suburban housing design since the early 20<sup>th</sup> century state that this: *“standard does not account for modern methods of design and construction and the capability of modern computer-based design programmes to model outcomes in relation to sunlight, daylight and privacy”.*

7.4.77. It goes on to state that: *“through the careful massing and positioning of blocks, positioning of windows and the integration of open space at multiple levels it is possible to achieve a high standard of residential amenity and good placemaking with separation distances of less than 22 metres”* and that: *“separation distances should, therefore, be determined based on considerations of privacy and amenity, informed by the layout, design and site characteristics of the specific proposed development”*.

7.4.78. The proposed development as revised achieves and/or exceeds the required *“16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units or apartment units above ground floor level”* under SPPR 1 and I also note that this SPPR does not specify a minimum separation distance to the front of houses as well as indicate that all planning applications shall be determined on a case-by-case basis to prevent undue loss of privacy. Having examined the proposed development as revised I consider that matters of overlooking would not be so great as to warrant a refusal of permission given the consistency of the design with the Development Plan and these guidelines.

7.4.79. Devaluation of Property

7.4.80. The Third-Party Appellant raises concerns that the proposed development, if permitted, as proposed despite the revisions made to it would give rise to depreciation in residential property values in its vicinity because of the undue amenity impacts. There is no expert opinion provided by them to support this contention and I am cognisant that there are many factors that can shape property values.

7.4.81. The principal amenity concerns are those previously discussed in the assessment above, but also the nuisances that would arise from the proposed development were it to be permitted and implemented.

7.4.82. The First Party do not accept that this particular concern has been substantiated by the Third Party and they contend that the forms part of a changing urban setting for which more targeted sustainable denser and compact new developments are encouraged. They contend that the loss of amenity is not such that it could be considered a bad neighbour in this urban neighbourhood context.

7.4.83. Whilst I recognise that there will be a significant change in context for properties within the immediate setting of this site should the proposed development be permitted as revised, I am not satisfied that there is evidentiary proof to substantiate that this

change would without doubt give rise to a devaluation of any individual or multiple of properties in its setting. Further, it could be argued that the proposed development could give rise to positive impacts in terms of property value given that redevelopment of these 'Z10' zoned land has the potential to add to the creation of a more vibrant and vital urban neighbourhood by way of providing a high-quality architectural response, improved public realm through to the provision of additional retail offer and a different type of dwelling to that which characterises this neighbourhood.

#### 7.4.84. Design

7.4.85. In general, I consider that the architectural design and layout resolution for this site is of a high quality, is legible as of its time and that the building responses appropriately to its existing context. With the eastern façade addressing Herberton Road finished in high quality materials, with good vertical and horizontal detailing as well as solid to void expressions. These architectural responses are carried through in a consistent manner to all sides of the building so that it does not turn its back on its boundaries with blank and monolithic elevations. The use of brick also ties in visually with the palette of materials that are present along Herberton Road. Overall, the proposed building is legible in the round and would be observable as such in future if the adjoining 'Z10' lands are developed. In terms of Herberton Road the overall design and layout approach would improve the visual amenities of its streetscape scene with the garden roof podium meaningfully breaking the mass and volume of the proposed building as observed from the adjoining residential properties to the north and south.

7.4.86. In general, I consider that the proposed development aligns with local through to national planning policy including the National Policy on Architecture. This policy document seeks high quality architectural design and layout for new developments seeks. It also seeks to prioritise brownfield sites and advocate where new build is justified which is the case for this site given the nature and scale of the existing buildings thereon that do not lend themselves for repurposing, which in this case is for any redevelopment that would accord with the objectives of 'Z10' zoned land. In my view the revised design is a high-quality place appropriate architectural design response for this site that aligns with Objective 1 of the National Policy on Architecture which in part seeks considered interventions and infill that embrace carbon neutrality, building longevity, flexibility, and adaptability as part of environmental sustainability which are matters that are overlap with other sections of this assessment.

- 7.4.87. I therefore raise no substantive concerns in relation to the design through to the layout of the proposed development in terms of its potential to integrate appropriately with its setting.
- 7.4.88. In terms of signage, I note that Section 15.17.5 of the Development Plan that deals with the matter of Shopfront and Façade Design Shopfront design acknowledge that these plays a key part in contribution to the quality of the public realm. It also sets out that attractive facades and shopfronts can rejuvenate the streetscape and create an attractive public realm environment. It therefore sets out a number of requirements for this type of development. Including but not limited to corporate signs will only be permitted where they are compatible with the character of the building, its materials as well as colour scheme and those of adjoining buildings; shopfront signage should be located at fascia level through to shopfront signage shall have regard to the Dublin City Council's Shopfront Design Guide, 2001.
- 7.4.89. I therefore concur with the Planning Authority that the height of sign labelled 'L.2' by 1.5m together with the omission of corporate sign labelled 'L.5' and 'L.7' is appropriate in this case. This is on the basis that together in my view their omission would reduce the adverse impact arising from the unnecessary level of corporate signage proposed. The First Party raised no objections to these amendments in their submissions to the Board. Overall, the reduction in height of sign 'L.2' and the loss of the two signs mentioned would avoid undue visual clutter on the streetscape scene of Herberton Road and in turn give rise to improved as well as balanced visual amenity outcome. The visual improvement arising from the removal of sign 'L.6' as suggested by the Third Party in their submission to the Board would in my view give rise to minimal visual amenity improvements and as such, I therefore do not consider its omission warranted. An appropriately worded condition is in my view acceptable to deal with signage matters should the Board be minded to grant permission.
- 7.4.90. Additionally, should the Board be minded to grant permission I consider imposing an appropriately worded condition(s) that requires the finalisation of the details of the shopfront treatment, including signage and lighting, of the three smaller retail units prior to their occupation would be appropriate.

- 7.4.91. Such a condition is appropriate in my view in achieving a qualitative response and protecting the visual amenities of Herberton Road. Additionally, such a condition would be consistent with Section 15. 17.5 of the Development Plan.
- 7.4.92. Moreover, I recommend that the Board consider that an additional condition be imposed that restricts the provision of any additional signage, lighting and other projections from this mixed use building other than those indicated in the revised design and that allowed on foot of agreement with the Planning Authority for three retail units. This is based on safeguarding the visual amenities of Herberton Road from undue visual clutter and poor-quality signage outcomes.
- 7.4.93. Demolition and Construction Nuisance
- 7.4.94. I consider that the demolition and construction nuisances that would arise from the proposed development, if permitted and if implemented, would be short term in nature and are matters that are ordinarily dealt with by way of appropriate standardised in nature conditions.
- 7.4.95. Operational Nuisance
- 7.4.96. I consider that the operational nuisances that would arise from the proposed development, if permitted and if implemented, would be of a type that would be expected from the types of mixed uses through to intensity of land use considered appropriate at this urban location. However, in my view, it would be appropriate and standard practice to provide appropriate conditions that seek to mitigate against any undue dis-amenity particular for the established amenity of residential properties in its setting. The Board may therefore consider it appropriate that the hours of the retail uses permitted are controlled through to impose other standard in nature conditions dealing with noise, odours (from the operation of the bakery), lighting (so as to ensure that there is no undue overspilling of light from the boundary of the site), the hours of use of the communal podium garden), the end use of the smaller three retail units and the like are appropriate to deal with potential nuisances from the nature, scale and quantum of development as revised.
- 7.4.97. Amenity Impact Conclusion
- 7.4.98. Based on the above considerations, I acknowledge that the proposed development will result in significant changes to the existing environment, including that of the



residential properties in its immediate vicinity. Notwithstanding, I consider that the proposed development as revised, subject to safeguards, would not give rise to any undue residential and/or visual amenity impact that would or cumulatively sustain a reason or reasons for refusal.

## **7.5. Flooding and Drainage**

- 7.5.1. The Third-Party Appellant and Observer in this appeal case raise concerns with regards to flooding and drainage. In this regard particular concerns are raised in terms of the site's previous use as a petrol station and any remaining contamination present on the site should an adverse flood event occur which during such a circumstance giving rise to potential multiple adverse impacts.
- 7.5.2. I note to the Board that a Strategic Flood Risk Assessment was carried out as part of the preparation of the Dublin City Development Plan, 2022-2028, with this dated November, 2021. This assessment carried out a review of the land-use zonings in relation to flood risk. It also set out several flood risk management policies and objectives which aligned with Section 28 planning guidance on such matters, i.e., a sequential approach to the management of flood risk where the preferred option is the avoidance of development in areas of flood risk; where this is not possible development type should be substituted to a less vulnerable or water compatible land use.
- 7.5.3. As part of this assessment the various land use zonings of the said Development Plan in areas of flood risk were subject to the Justification Test for Plan Making to demonstrate that development is necessary for strategic growth of the area and that flood risk can be mitigated and managed appropriately.
- 7.5.4. It sets out that: *"at site specific level, all development proposals, regardless of location, will require an appropriately detailed flood risk assessment. As a minimum this will be a 'Stage 1 – Identification of Flood Risk'; where flood risk is identified, a 'Stage 2 – Initial FRA' will be required and depending on the scale and nature of the risk, a 'Stage 3 – Detailed FRA' may be required"*.
- 7.5.5. In relation to the location of the site, which I note is situated c100m to the south of the Grand Canal, and it is c1.3km to the east of the River Poddle watercourse but with stretches of this river culverted at closer proximity to the site as well as feeding into the Grand Canal. Alongside this, the topography of the site also slopes in a northerly

direction with the documentation submitted with this application indicating a gradient of approximately 1:80. The documentation submitted with this application also sets out that the highest point of the site is located on its southern boundary at 24.2m AOD and this falls towards the northern boundary of the site by 1.2m.

- 7.5.6. The site forms part of 'Area 14: Poddle: Culverts outside Canal', on which the eastern side of the site contains Flood Zone A and B lands with the rear of the site forming part of Flood Zone C lands in the SFRA.
- 7.5.7. In addition, it adjoins land to the north, south and east that form part of Flood Zone A and B lands. With available information for this location showing that Flood Zone A and B lands align with Herberton Road and originating from the Grand Canal corridor from which the Flood Zone A and B lands also extend in an east west and a north south direction.
- 7.5.8. The SFRA describes this area as: *"the Poddle River Flood Zone goes from Sundrive Road and Clogher Road, to Lower Crumlin Road, to Rutland Avenue, to Keeper Road and the Canal. Development in this area is a mixture of low to high density residential and commercial with infill development of both"*.
- 7.5.9. It indicates that there are no existing defences present and that the construction of a new flood scheme on the Poddle in the areas of both DCC and South Dublin County Council is due to start in 2022.
- 7.5.10. In relation to these works I note that the Board granted permission for the Poddle Flood Alleviation Scheme on the 1<sup>st</sup> day of June, 2023, with these works consisting of protection works along and adjacent to the River Poddle extending from the upper reaches of the river in Tymon North, Tallaght to Merchant's Quay. These works though remote from the site itself but when implemented would have significant direct and indirect positive effects on the lands within Area 14 Map. Including and not limited to the positive outcomes that would arise from alleviating flood risk in terms of human health and protection of material assets.
- 7.5.11. A Flood Risk Assessment (FRA) has been submitted as part of the documentation accompanying this application. It is dated 9<sup>th</sup> day of March, 2022, and as such predates the approval for the above-mentioned flood alleviation works by the Board. It also predates the adoption of the current City Development Plan.

- 7.5.12. This FRA indicates that having regard to the flood modelling for the River Poodle undertaken in 2014 as part of the Eastern CFRAM Study that the site is upstream of five key culvert headwalls that were assumed to be 60% blocked during hydraulic analysis. It identified that the fluvial flooding that impacts the site appear to be from a combination of the headwalls at Mount Argus Park and at Harolds Cross. With these resulting in surcharging during adverse events and during such events the runoff being conveyed downhill via Sundrive Road towards Herberton Road with the fluvial runoff finally ponding adjacent to Grand Canal where topographic levels appear to start rising again adjacent to the bridge over the Grand Canal at Dolphin Road.
- 7.5.13. This report found that the site is not at risk of coastal flooding and that there are no historical records for any groundwater flooding.
- 7.5.14. This report sets out the historic flood events in this area with the latest one documented being in 2011.
- 7.5.15. It also has regard to the fact that the site forms part of Site 14 – Poddle: Culverts outside Canal under the previous City Development Plan SFRA.
- 7.5.16. This report considered that as the entrance doors of the proposed development are required to ‘tie-in’ with existing public pavement levels adjacent to the site boundary. However, given the site’s flood risk zoning that instead of providing the 300mm of freeboard above the 1% AEP flood zone as recommended under SFRA, it is recommended that the floor level should be set at 23.4m.
- 7.5.17. It is further recommended that the ground floor to be constructed from flood resilient materials as well as waterproofed to 600mm above existing ground level to allow for a maximum 250mm depth of flooding anticipating the 1% AEP flood event, plus an allowance for freeboard and climate change.
- 7.5.18. Moreover, it is recommended that the location of the commercial units should be situated on ground floor with glazing toughened to accommodate flood waters and all doors should either be sealed flood resistant doors or protected by temporary flood barriers that could be quickly erected during a large storm event or localised failure. The supermarket would be located at first floor level above predicted flood levels and no residential accommodation is proposed on ground floor level. In addition, the ground floor level use is confined mainly to access to stairwells, lifts, and car parking with the three smaller ground floor retail units located on the higher points of the site

towards the southern boundary and with flood mitigation measures to safeguard their interior spaces should an adverse flooding event occur.

7.5.19. This report also details the emergency access and egress for residents and occupiers in flood conditions, i.e., via the central car park area which connects to the higher ground on the southern boundary of the site. I note for clarity land uses that are vulnerable to a flooding event like residential are not located at ground floor level in this proposal and in time the accessibility for emergency services would be improved by the opening up of the connectivity to the lands to the west of the site which link to the Flood Zone C lands on this site through to the improved flood alleviation measures discussed for the River Poddle and the like.

7.5.20. Moreover, it has regard to drainage and the proposed surface water drainage including it sets out that it has been agreed with Irish Water that the proposed surface water can discharge into the combined sewer in Herberton Road at a rate of 3.14 l/s for all rainfall return periods, up to and including the 1 in 100-year event, inclusive of the allowance for climate change.

7.5.21. The accompanying Flood Risk Assessment sets out that the communication has been hard with the OPW as part of compensatory flood storage on site and that the volume of such storage would include the equivalent floor area that has been displaced by this development in line with local and national guidelines. Following on from consultation with the OPW a site-specific analysis of compensatory flood storage on site will be undertaken. Given that this report was finalised prior to receiving the requested details from the OPW the evaluation of flood risk and the potential flood mitigation measures are described as an 'interim evaluation' and that further discussions would be had with the OPW to accord with their recommendations and guidance.

7.5.22. I note that the Planning Authority's Drainage Division raise no objection to this, or the provisions proposed for foul and water infrastructure subject to standard safeguards.

7.5.23. Based on the above, I note that the more recently adopted SFRA for the current Development Plan carries through the same requirements for developments at this location. Under which it sets out on the matter of development options for these lands that: *"[t]he main flood cells in this area are located on roadways and in small residential and commercial developments. No new development should be allowed in these areas unless they are defended except for extensions and small infill provided the number*

*of people at flood risk is not increased. Residential development (mainly infill/ brownfield development); the redevelopment of the Crumlin Shopping Centre (Crumlin Key Urban Village) and other small commercial developments would be a natural extension of existing development in this area. However, any development could reasonably be accommodated within the extents of Flood Zone C and should not need to extend into Flood Zone A or B unless defended”.*

7.5.24. Overall, I am satisfied that the proposed building and its uses have been designed to accord with the recommendation of the previous SFRA (with these as said also aligning with the more recently carried out SFRA for the current Development Plan) and the Planning System and Flood Risk Management Guidelines notwithstanding it is unclear when the flood alleviation works will be carried out and the submitted FRA are based on an interim evaluation of flood risk with site specific analysis from the OPW. Also, the mitigation measures are based on an anticipated 1% AEP flood zone level and do not appear to robustly mitigate for the impact of climate change. With for example the most recent SFRA setting out: *“an increase of 20% flow on top of the estimated 100- year culvert flow will cause more flooding in this area. A 30% increase in river flow on top of the estimated 100-year culvert flows will cause significant flooding”.*

7.5.25. While I am satisfied that the potential risks have been adequately considered and addressed in accordance with the requirements at the time this application was submitted through to I am satisfied that this has informed an appropriate response in terms of informing the design and layout of the proposed building as well as the manner in which the mixed land uses are accommodated within the proposed building, notwithstanding, the findings of this FRA is out of date and does not fully align with the most recent findings of the SFRA for the current City Development Plan. It also does not address as part of the mitigation measures any potential overlapping concerns arising from the historic land use of the site which includes a petrol station and the lack of certainty in terms of whether the site is now free of any residual contamination from this former use.

7.5.26. I therefore consider should the Board be minded to grant permission that it would be appropriate that a condition requiring an up to date FRA with site specific analysis based mitigation measures that are both informed by the required information from the OPW but also by the precaution of the site being one that if there were to be an adverse

fluvial flooding event arising during the excavation of grounds that the risk of contamination has been isolated and contained within the confines of the site. This in my view would overcome any of the outstanding flood risk issues that would arise from the development of this site which is generally of a design and layout that is consistent with the development options identified in the SFRA for Flood Zone A and B lands. Alongside, there will be an improved situation in terms for the Crumlin and Rialto urban areas once the permitted flood alleviation works for the Poddle River have been carried out. Thus, reducing the potential for future adverse flooding events in this urban locality arising from the River Poddle and Grand Canal. Notwithstanding, the provision of such a precautionary up dated FRA I consider that the design and layout of the proposed development accords with best practice for Flood Zone A and B lands.

- 7.5.27. In term of the other drainage concerns raised by the Observer in this appeal case I am satisfied that the conditions recommended by the Planning Authority's Drainage Section addresses them where relevant and I therefore recommend the Board to include these recommendations as part of any grant of permission. Some of the more detailed drainage design responses sought have the potential to infringe on land outside of the applicant's legal interest and/or may require service changes to the overall design and layout.

#### **7.6. Transportation – Traffic, Access, and Parking**

- 7.6.1. The Third Party raises transportation concerns in relation to the proposed development.
- 7.6.2. On this matter I first of all note that the original planning application was accompanied by a 'Traffic and Transport Assessment' that is dated March, 2022, and that the initial Planning Authority's Transportation Planning Division's report concluded with a recommendation for additional information. Their additional concerns were set out under Item 9(a) to (i) of the Planning Authority's further information request which the applicant responded to on the 24<sup>th</sup> day of October, 2022.
- 7.6.3. This further information request gave rise to several revisions including improvements to the footpath area running along Herberton Road which was increased by 500mm. This amendment results in the public footpath that runs along the site, and which is currently of a substandard width increasing to between 3.2m to 4m which would

represent a significant improvement over the existing situation and accords with the DMURS standard of a minimum of 3m for high pedestrian activity footways.

- 7.6.4. In addition, it is indicated that the applicant has commenced discussions with the Transportation Division to agree the provision and location of a bus shelter along the adjoining increased in width road frontage to Herberton Road. As well as with the NTA to agree this provision.
- 7.6.5. Additional improvements included proposed junction onto Herberton Road design amendments; improved pedestrian and cycle provisions; the provision of a set down area to serve the three retail units within the internal layout of the site; improved provisions for future access for refuse and delivery vehicles as well as in general to accommodate the quantum of different land uses proposed; bicycle parking provision that accords with required standards; through to the reduction in the over provision of car parking spaces to a total of 54 (Note: 28 for residential element and 26 for the retail element) in keeping with local through to national planning policy provisions that seek place based decarbonisation as part of aspiring to a carbon-neutral society (with net-zero emissions) and circular economy.
- 7.6.6. Overall, the Transportation Planning Division considered that these amendments and improvements to the proposed development in general satisfactorily addressed their concerns and that all outstanding matters could be dealt with by way of condition. In this regard their report concluded with 11 recommended conditions whilst mainly standard in nature but also requiring a number of specific improvements including for example a minimum of 20% of spaces to be provided with EV charging with 100% of the spaces being ducted to facilitate future cabling to serve charging points for Electric Vehicles; restricts car parking spaces from being sold, rented or otherwise sublet to other parties; agreement of no. and type of cycle parking provision; agreement of areas to be taken in charge; through to it sets out that the provision of a bus shelter alongside the bus stop would be subject to a separate statutory process with all works at the applicants expense.
- 7.6.7. I note that these recommendations can be found as requirements under Condition No. 16 of the Planning Authority's notification to grant permission and I raise no substantive concerns in relation to same on the basis that these when taken together with the revisions made to the applicant to the proposed development as part of their

further information response would give rise to an improved qualitative outcome. I also consider that the reduction in car parking spaces aligns with Goal 5 of the National Sustainable Mobility Policy Action Plan, 2022-2025 which seeks to encourage people to choose sustainable mobility over the private car. It similarly aligns with Climate Action Plan 2023 for reduced private car travel and the Sustainable Residential Development and Compact Settlement Guidelines Section 5.3.4 which sets out that in areas where car-parking levels are reduced studies show that people are more likely to walk, cycle, or choose public transport for daily travel. It also sets out that in keeping with the National Sustainable Mobility Policy and the Climate Action Plan 2023 it will be: *“necessary to apply a graduated approach to the management of car parking within new residential development”*.

- 7.6.8. Moreover, the revised scheme has 41 apartment units with 28 of the 54 car parking spaces to serve these units. This car parking provision accords with SPPR 3 of the said Guidelines which states that: *“it is a specific planning policy requirement of these Guidelines that: (i) In city centres and urban neighbourhoods of the five cities, defined in Chapter 3 (Table 3.1 and Table 3.2) car-parking provision should be minimised, substantially reduced or wholly eliminated. The maximum rate of car parking provision for residential development at these locations, where such provision is justified to the satisfaction of the planning authority, shall be 1 no. space per dwelling”*. The provision of 28 car parking spaces is also justifiable based on the public transport availability and accessibility at this location as discussed in this assessment.
- 7.6.9. Whilst I note that the Third Parties raise concerns that the number of car parking spaces in their view are not satisfactory to deal with the quantum of development proposed on this site under this application. Notwithstanding, Section 8.5.7 of the Development Plan emphasises that a strong car-parking policy in the city has been instrumental in changing travel behaviour and promoting sustainable development and seeks to ensure adequate but not excessive parking provision for short-term shopping business. As part of this it indicates the promotion of accessible parking, car share schemes and electrical vehicle charging parking in all developments through the development management process.
- 7.6.10. It also sets out that there is a need to cater for people’s transport needs and facilitate people of all ages and abilities and families living within the city is recognised.



- 7.6.11. To achieve this, it sets out that a range of measures such as those outlined above, including some residential parking, shared mobility, and safe bike parking.
- 7.6.12. It also sets out that how streets and demand for on street parking are managed must be balanced with other necessary strategic improvements such as street greening initiatives, secure bicycle parking and improvements to footpaths and cycle lanes. The latter is provided for under policy SMT25 of the City Development Plan.
- 7.6.13. Further, Policy SMT27 of the Development Plan in relation to car parking in residential and mixed-use developments seeks to ensure that sustainable levels of car parking and car storage in residential schemes in accordance with the car parking standards set out in the Development Plan, as per Appendix 5, is provided, to reduce the requirement for car parking.
- 7.6.14. Of further note Policy SMT27 of the City Development Plan seeks to encourage new ways of addressing the transport needs of residents (such as car clubs and mobility hubs) to reduce the requirement for car parking and to safeguard the residential parking component in mixed-use developments. With the Mobility Management Plan setting out a proposed car sharing bay would be immediately set out as part of the proposal and within 1 to 3 months a private car sharing club would also be set up.
- 7.6.15. Additionally, it is proposed to do periodic monitoring to assess that the stated targets are met. The proposed development also proposes to provide EV parking spaces to accord with the provisions of the Development Plan.
- 7.6.16. Moreover, as discussed in detail in this assessment, the site is one that is accessible to bus public transport options from Herberton Road but also is within close walking distance to other public transport options including a wider selection of Bus Routes as well as to the Luas red line. For clarity purposes I note that the 54 car parking spaces include 4 No. EV charging spaces (2 No. being designed to accommodate disabled car parking, if required); 2 No. disabled spaces and 2 No. Car Sharing Spaces and 3 No. motorcycle spaces for both the residential and retail uses of the proposed development as revised.
- 7.6.17. Overall subject to appropriate standard safeguards I consider that the car parking provision is provided in a manner that reflects local through to national planning policy provisions and guidance which seeks car parking ratios to be reduced at all urban locations. This location is well served by public transport and is within walking distance

of a large population through to the substantial reduction in car parking spaces for the residential element can be further supported by the implementation of agreed measures of a mobility management plan through to car share schemes. Moreover, the reduction in car parking provision for the retail and residential element will also reduce the traffic movements generated at the proposed entrance which provides the required sightlines and is DMURS compliant onto Herberton Road. With the design of this junction, the pathways and access roads also improved by way of the applicants revised design under their further information response in order to reduce potential conflict between cars and vulnerable road users. Thus, overall giving rise to an improved urban environment as well as reducing potential conflict between vehicles and other road users.

- 7.6.18. In relation to cycle spaces the revised design includes improved cycle parking and secure cycle storage for both residential and retail elements.
- 7.6.19. In total 93 bicycle spaces are proposed. This is comprised of 2 no. short stay cargo spaces close to the entrance to the supermarket and 3 no. cargo spaces provided for residents in a secure cycle storage area on the ground floor level. In this regard the retail component is now served by 23 no. cycle parking spaces at the ground floor with 6 secure spaces also provided in a secure storage area accessed via the car park.
- 7.6.20. In relation to the residential provision, I concur with the Planning Authority Transportation Division that by way of condition a minimum requirement of 64 cycle parking spaces should be provided inclusive of the 3 no. cargo spaces by way of condition for clarity. Alongside the requirements of recommendations set out by them under Recommendation No. 3 of their report to provide a satisfactory provision of cycle parking spaces for future occupants, visitor through to retail staff of the proposed scheme.
- 7.6.21. I consider that the cycle parking provisions accords with Development Plan requirements and also the Section 5.2.5 and SPPR 4 of the Sustainable Residential Development and Compact Settlement Guidelines which sets out that bicycle parking and storage cycling should provide a flexible, efficient and attractive transport option for urban living and that this transport mode is fully integrated into the design of all new residential schemes "*in particular, in areas of high and medium accessibility*" which as discussed I consider this location to be. Should the Board be minded to grant

permission for the proposed development the Board may wish to consider appropriate conditions in relation to the operation and maintenance of the cycle storage facilities. Such a condition would accord with the said Guidelines.

- 7.6.22. Whilst I observed that there is an issue with on-street car parking on the opposite side of Herberton Road and on the public road network in the surrounding area I also observed that unlike nearby Dolphin Road and Crumlin Road there was a low volume of vehicle traffic along this road. There was also limited footfall and/or bicycle movements. I am of the view that subject to standard conditions the proposed development would not give rise to any undue additional impacts on this accessible urban location where for example the proposed retail element is as said in easy walking distance from a large population hinterland through to there are several bus routes and a Luas Stop also within walking distance. These provide good connectivity to Dublin's city centre, employment hubs, hospitals, third level education through to other services and amenities that are outside of easy walking and/or cycling reach. Further, subject to further redevelopment of other lands within this parcel of 'Z10' zoned lands there will likely be an increase in the area's residential population as well as other synergistic land uses added to this area.
- 7.6.23. I am satisfied that the Traffic and Transport Assessment submitted demonstrated that the traffic impact of the proposal would be satisfactory and when taken in conjunction with its proximity to high level and high frequency public transport infrastructure the proposed development would not be one where any of its future uses would be solely dependent or reliant upon private car ownership. In addition, I would note that the proposal would have the potential to facilitate in future a bus shelter on the increased width footpath proposed.
- 7.6.24. I note that the Planning Authority's Transport Division did not object to the proposed development as revised considering that the applicant had addressed their concerns and that any outstanding matters could be dealt with by way of condition.
- 7.6.25. Conclusion, I am satisfied based on the information submitted and the assessment above that the proposed development would be satisfactory in the context of traffic safety and convenience, particularly having regard to the qualitative improvements proposed in the applicant's further information response.

## **7.7. Drainage – Servicing**

- 7.7.1. The site is currently connected to a 600mm concrete combined sewer running along the eastern side of Herberton Road and there is an existing 525mm concrete surface water pipe traversing the site towards its northern end. It is therefore proposed to facilitate the proposed development by the existing private drainage and connection to the public sewer be decommissioning this infrastructure and divert the existing 525mm concrete surface water pipe traversing the site by intercepting it along the southern boundary of the site and ultimately reconnecting into the existing public road surface water drainage at this location.
- 7.7.2. I consider that the overall design of the surface water drainage system to serve the proposed development has been designed to comply with the guidelines set out in the Greater Strategic Drainage Study and the policies set out in the Development Plan. Further, the design seeks to minimise stormwater runoff, to collect and treat the runoff as close to source as possible and increase the amenity as well as biodiversity via the implementation of Sustainable Urban Drainage Systems (SuDS). In addition, it is proposed to build a new gravity surface water sewer for runoff which will discharge into the 600mm combined sewer on Herberton Road via a new connection with the discharge being reduced to greenfield rates by measures provided on site, including for example the provision of a hydro-brake flow control, the use of permeable paving, green roofs for the attenuation cellular storage. The design of the system has considered the 1-to-100-year storm event with an allowance of 20% for climate change. The design also includes measures to intercept contaminants, i.e., petrol & oil interceptor.
- 7.7.3. I consider that the overall design approach for surface water is consistent with Chapter 9 of the Development Plan, including Section 9.5.4 and Policies SI22, SI24 and SI25.
- 7.7.4. I also note that the Planning Authority's Drainage Division raised no substantive concerns in relation to this matter.
- 7.7.5. In terms of wastewater, I note that the applicant proposes a completely separate system for foul and surface water which is an approach that is compliant with the Greater Dublin Drainage strategy requirements and Policy SI3 of the Development Plan.

- 7.7.6. Additionally, the documentation sets out that it is proposed to discharge foul water effluent from the proposed development into the existing 600mm diameter combined sewer which runs in a northerly direction along Herberton Road. As part of this connection a new gravity foul water manhole would be constructed on the existing wastewater sewer and the drainage design would accord with Irish Water's Code of Practice for Wastewater Infrastructure.
- 7.7.7. I consider that the overall design approach is consistent with Policies SI4 and SI5 of the Development Plan as well as the Department of the Environment's 'Recommendation for Site Development Works' through to Irish Water's Code of Practice for Infrastructure. I also note that the Planning Authority's Drainage Division raised no substantive concerns on the matter of foul drainage nor were any capacity issues highlighted by them or Irish Water.
- 7.7.8. In terms of water supply, it is set out that there is an existing 6" cast iron 1920 watermain and an existing 4" cast iron watermain running under the footpaths of Herberton Road.
- 7.7.9. At present there is an existing 6" pipe connecting the site to the public water supply which it is proposed to be decommissioned and a new 150mm diameter watermain with final details and connections to be agreed with Irish Water. There appears to be no capacity issues in terms of the public water supply to meet the needs of the proposed development and the Drainage Division. I also note that Irish Water has raised no substantive concerns on this aspect of the proposed development or have they highlighted any capacity issues to serve the quantum of development sought or cumulative impacts with permitted or planned projects.
- 7.7.10. Conclusion,
- 7.7.11. Having regard to the serviced nature of the site and having examined the reports on file in relation to servicing and drainage of the proposed development including attenuation based on the information before me I am satisfied that any outstanding servicing and drainage concerns can be addressed by way of standard conditions like those attached by the Planning Authority should the Board be minded to grant permission.

## 7.8. Other Matters Arising

- 7.8.1. **Social Audit:** The First Party Appeal seeks the omission of Condition No. 5 from the notification to grant permission. This condition requires the preparation of a community and social infrastructure audit prior to the commencement of development. It also restricts the future use of Retail Units No.s 2 and 3 to community and social uses unless otherwise agreed in writing with the Planning Authority. The reason for this condition is given as compliance with permission regulations.

I also note that the requirements of this condition are interconnected with the requirements of Condition No. 15 as it further reiterates that the use of the units are subject to the provisions of a Community and Social Audit.

The reasons for the requirements of Condition No. 15 which also seek agreement for the signage associated Retail Units 1, 2 and 3 is given as in the interests of orderly development as well as visual amenity.

The Planning Officers report also sets out that under the requirements of Section 16.10.4 of the previous Development Plan that large scale developments over 50 units or 5,000 sq.m. must contribute towards an area in terms of community facilities and social infrastructure where significant shortfalls are identified. They also note the concerns raised by Third Parties regarding the potential adverse impact of the proposed development on existing services. This appears to be the Planning Authority's basis for imposing Condition No. 5 and 15 as part of the notification to grant permission.

The First Party in their appeal submission do not accept that the requirements of Condition No. 5 meet the basic criteria for planning conditions as identified under the Section 28 Development Management Guidelines for Planning Authorities, i.e., necessary; relevant to planning; relevant to the development through to precise. It is further considered by them that the reason for the condition is also not precise and whilst they would be satisfied to discuss the letting of one or more of these units within the proposed development to the City Council for the purposes of community and social uses within the Herberton Road area, it is considered that the requirement of this condition restricts the use and occupation of prominent units within this scheme. Which in turn would have a detrimental impact on the development and its streetscape scene.

The Planning Authority's response to the grounds of this appeal makes no specific comment on the requirements of Condition No. 5 and seeks that the Board uphold its decision.

Under the current Development Plan, I note that Table 15-1 sets out thresholds for Planning Applications which requires a Community and Social Audit for applications where 50 or more residential units are proposed.

I further note that this requirement is reiterated under Section 15.8.2 of the Development Plan for applications, comprising of more than 50 or more dwelling units, and states relation to community and social audits that: *"community facilities, such as local parks and playgrounds, community centres, local hubs, schools, childcare are an integral component of a successful neighbourhood"*. In relation to mixed use developments it also sets out the inclusion for the provision for community type uses.

Given that the dwelling units have reduced below the threshold for such audit and given that the applicants willingness to enter into an agreement with the City Council to use one or more of the three retail units proposed I consider that should the Board be minded to grant permission that there is no reasonable basis for the requirements of Condition No. 5 to be included given that it is not a specific requirement for the scale of development sought under this application as revised.

I am also cognisant that the thresholds set out under Appendix C of the Sustainable and Compact Settlements, Guidelines for Planning Authorities, set out a higher threshold of in excess of 100 homes for the preparation of community, social and cultural audits, where such an audit has not been undertaken as part of the statutory plan making process. The preparation of the same is provided for under Section 7.3 of Development Plan Guidelines (2022).

Whilst it would appear that cultural audits for the city have been carried out by the Planning Authority a community, social and cultural audit for the city a more detailed and focused evidence-based examination of existing community, social and cultural services relative to this urban neighbourhood has not been carried out. As such should I consider that it is unclear that there are any deficiencies in their provision in this growing populated urban neighbourhood and as such how the proposed development if permitted and if implemented would be impacted by or impact the function of such services cannot be accurately examined. Notwithstanding, in relation to the

Sustainable and Compact Settlements, Guidelines for Planning Authorities, the proposed quantum of dwelling units, as revised significantly falls below the threshold set out in this Section 28 Ministerial document.

Alongside the above consideration, I consider that the imposition of a condition like Condition No. 5, has the potential to restrict finding a suitable retail/commercial use for these units and/or the flexibility of the floorspace associated with Retail Units 1, 2 and 3 upon completion of construction of this scheme.

I accept that in such a scenario that this in turn could be detrimental to the future viability of this scheme through to the potential of these units to contribute to the animation and vitality of the proposed buildings to the streetscape scene of Herberton Road would be diminished if they were to remain vacant upon completion of the proposed development. Given the location of these three units and the schemes provision of a potential 3m connection between Herberton Road and the lands with 'Z10' redevelopment potential to west the vacancy of these units would also potentially impact on the animation of this future link. Moreover, it would reduce the potential passive surveillance of both existing and potential streetscape scenes.

Moreover, as said the First Party is willing to enter dialogue with the City Council should they wish to secure a community/social use in one or more of Retail Units 1, 2 and 3.

- 7.8.2. **Open Space:** I acknowledge that the provision of communal open space for future occupants meets local and national planning policy standards with c610m<sup>2</sup> proposed in the roof top podium garden. I also acknowledge that the proposed apartment units meet the minimum standards set out in local and national planning policy provisions for private open space amenity, including the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2023, which accords with Section 5.3.2 and SPPR 2 of the Sustainable Residential Development and Compact Settlement Guidelines.

Notwithstanding, these positives in the proposed design and layout of this mixed-use scheme the proposed development does not include any provision of a dedicated public open space. In this regard, I note that Section 15.8.6 of the Development Plan defines such space as: *“open space is an external landscaped open space which makes a contribution to the public domain and is accessible to the public and local*



*community for the purposes of active and passive recreation, including relaxation and children's play. Public open space also provides for visual breaks between and within residential areas and facilitates biodiversity and the maintenance of wildlife habitats".*

It also sets out that all residential development is required to provide for public open space with reference to be had to guidance set out in Section 15.6.12 and Section 15.6 of the Development Plan.

In essence the public open space requirement for residential developments is 10% of the overall site area as public open space and given the lack of provision the Parks and Landscape Division of the Planning Authority require in such cases that a financial contribution be paid *in lieu* of this provision (Note: Table 15-4 sets out the minimum applicable Public Open Space requirements for residential Development on 'Z10' zoned land).

I am cognisant that there is provision for this flexibility under the Sustainable Residential Development and Compact Settlement Guidelines under Objective 5.1 which advises in such cases that a financial contribution within the terms of Section 48 of the Planning and Development Act, 2000, as amended, in lieu of provision within an application site is acceptable. I therefore recommend the Board should they be minded to grant permission for the proposed development the inclusion such a condition. In this regard I note that there are a number of passive and active open space amenities in proximity of the site. With this including but not limited to Brickfield Park, The Iveagh Grounds, the pockets of open space along Dolphin Road through to the linear open space running alongside the Grand Canal.

- 7.8.3. **Landscaping:** Concerns are raised that the proposed development has the potential to adversely impact on an existing mature tree that is situated on the public domain alongside the north easternmost corner of the site.

The submitted drawings show that the footprint of the proposed building would encroach underneath the canopy of this tree.

I therefore raise it as a concern that there is a high likelihood for the site works associated with the proposed development were it to be permitted in the revised form proposed.

Of particular concern is the extensive ground and below ground works associated with the implementation of the proposed scheme as revised. Given that these works have the potential to damage part of the root system supporting this high quality and mature street tree.

In my view this tree not only contributes positively to the limited biodiversity in this urbanscape it also positively enhances the visual amenities of Herberton Road's streetscape scene. It is one of two surviving mature trees located along the adjoining stretch of Herberton Road. The other is near the north of it on the public domain adjoining Thistle House.

Whilst this proposal relates to a site that has no current biodiversity of merit given the manner in which it has been developed consisting mainly of buildings and hardstand, I raise it as a concern that there is no accompanying Arboricultural Report to provide any clarity on the impact of the proposed development, if permitted, on the adjoining street tree located to the north east of the site. In turn there is no expert advice setting out mitigating measures to safeguard the health and longevity of this tree below and above ground during construction works.

There are positives arising from the proposed development in terms of the landscape design which includes additional specimen tree planting along the site's Herberton Road frontage. These works together with the additional tree planting on site would not only in time help to visually soften what is a more significant in scale, mass, volume, and height of the proposed mixed-use building but would add to the limited biodiversity in this urban location.

I also note that there is no evidence to support that the proposed development, if permitted, would adversely impact any tree within its vicinity that is of importance to any protected species.

Outside of the concerns raised above which I consider could be dealt with by way of an appropriately worded conditions I raise no substantive landscaping concern in relation to the proposed development.

- 7.8.4. **Section 48 Development Contribution:** The First Party lodged an appeal to the Board in relation to the Section 48 contribution payment required under Condition No. 2. They contend that the sum sought under this condition has been incorrectly

calculated having regards to the revised scheme and the exemptions set out under the applicable Development Contribution Scheme.

The Planning Authority acknowledges that they have in error miscalculated the sum to be paid as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme and therefore accepts the revised calculations put forward by the First Party.

Having regard to the provisions of the applicable Section 48 Development Contribution Scheme I note that the current rates for developments falling under the brackets of industrial/commercial and residential, the amount of contribution was fixed at a rate of €118.60 and €113.82, respectively, with these figures applicable between the dates of the 1<sup>st</sup> of April, 2023, to the 31<sup>st</sup> day of December, 2024.

I also note that Condition No. 2 of the Planning Authority's notification to grant permission sets out that where there has been an indexation increase applied to the current Development Contribution Scheme or in the situation where a new Section 48 Development Contribution is made that the amount of the contribution payable: "*will be adjusted accordingly*".

Should the Board be minded to grant permission I recommend that the standard Section 48 contribution condition be imposed.

7.8.5. **Part V:** The applicant has engaged in Part V discussions with the City Council and there is an agreement in principle between both parties for the applicant's compliance with their Part V requirements. In this regard the City Council's preferred option is to acquire units on site which it notes can only be agreed in respect of the actual permitted development. The Planning Authority indicates that this matter can be suitably addressed by way of condition and their notification to grant permission includes such a condition under Condition No. 13. Should the Board be minded to grant permission I recommend that a similar condition be imposed in the interest of requiring compliance with Part V of the Planning & Development Act 2000, as amended.

7.8.6. **Condition for Payment of a Security Bond:** The Planning Authority in their response to the grounds of this appeal request that the Board should it be minded to grant

permission to attach conditions seeking the payment of a financial bond as a precaution to secure the satisfactory completion of the proposed development. I note that their notification to grant permission included such a condition under Condition No. 4. It is standard practice to attach such a condition and I recommend that the Board should it be minded to grant permission impose a similar condition to ensure a satisfactory completion of the proposed development.

- 7.8.7. **Naming:** I note to the Board that this section of the Development Plan states that: *“development names shall reflect local historical, heritage or cultural associations and the basic generic description (i.e., Court, Quay, Road, etc.) must be appropriate”* and that: *“the planning authority will approve the naming of residential developments in order to avoid confusion with similar names in other locations. Developers shall agree a scheme’s name, which shall be in the Irish language, with the planning authority, prior to commencement of development, and the name selected shall be installed on site. Internal and external street/road signage must be in both the Irish and English languages, or, for newly named developments, in Irish only”*.

Should the Board be minded to grant permission for the proposed development I recommend that it includes a condition like Condition No. 12 of the Planning Authority’s notification to grant of permission on the basis that such a condition is standard practice for this type of development and is a required under Section 15.8.9 of the Development Plan.

- 7.8.8. **Biodiversity:** Having regard to the existing condition of the site, I am satisfied that the proposed development will have no significant adverse impacts on the ecology or biodiversity of the site, the site setting and/or the wider area subject to standard safeguards. I also consider that the landscaping proposed, in particular, at the podium roof garden through to the addition of new street trees along the Herberton Road frontage would give rise to improved biodiversity on site which in turn would be of benefit to this urbanscape where there is limited biodiversity of qualitative merit and where such landscape can improve air quality through to play a role in capturing carbon.

- 7.8.9. **Universal Design Statement:** Having regard to the thresholds set out in the Sustainable and Compact Settlements Guidelines for Planning Authorities under Appendix C, i.e., I recommend that the Board should it be minded to grant permission

for the proposed development require by way of condition the preparation and submission of a 'Universal Design Statement'. This is based on ensuring that the proposed development results in a qualitative outcome for future occupants, visitors, and staff, particularly those who are mobility impaired, once operational. In this regard I note that the said Guidelines recommend applications containing 10 or more residential units or mixed-use development over 1,000-sq. metres should be accompanied by such a statement and they also set out that regard is had to the document 'Building for Everyone, a Universal Design Approach and Universal Design Guidelines for Homes in Ireland (National Disability Authority).

- 7.8.10. **Climate Action and Energy Statement:** Having regard to the thresholds set out in the Sustainable and Compact Settlements Guidelines for Planning Authorities under Appendix C, i.e., I recommend that the Board should it be minded to grant permission for the proposed development require by way of condition the agreement in writing of a Climate and Energy Statement with the Planning Authority prior to the commencement of development on site. In this regard I note that the said Guidelines recommend applications of 30 or more residential units, 1,000-sq. metres or more in size, be accompanied by such a statement. While I note that the documentation including the drawings submitted with this application show pv panels the preparation of such a statement will ensure that the measures proposed to be implemented are up-to-date and consistent with decarbonisation more sustainable climate resilient outcomes in new developments.

## 8.0 **Appropriate Assessment**

- 8.1. I am cognisant that Article 6(3) of the Habitats Directive requires that any plan or project not directly connected with or necessary to the management of a European site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to Appropriate Assessment of its implications for the sites in view of the sites' Conservation Objectives. The Board is the competent authority in this regard and must be satisfied that the development in question would not adversely affect the integrity of the European sites having regard to their conservation objectives.

- 8.2. The applicant has submitted document titled: 'Proposed Mixed Use Retail and Residential Development, Herberton Road, Rialto, Dublin 12 – Screening for Appropriate Assessment Screening Report' (Final), dated March 2022.
- 8.3. It considers that whilst the proposed development is not directly connected with or necessary to the management of any Natura 2000 site it has been determined to potentially have adverse impacts upon Natura sites identified in Section 4 of this report and is therefore subject to the requirements of the AA process.
- 8.4. It describes the site as currently occupied by a car showroom building with associated external hardstanding car park bound by dwellings on its southern side, Herberton Road on its eastern side, to the west by an industrial building and to the north by a mixture of commercial and residential buildings. It also sets out that there are several Natura 2000 sites within 15km of it.
- 8.5. It describes the proposed project as originally sought. However, since this report was prepared the scale of the development has been reduced by way of the applicant's further information response. With this including a significant reduction in apartment numbers. This is also outlined in Section 2 of my report above. As such the report reflects a denser development to that now sought for the Boards determination.
- 8.6. In terms of the historic use of the site the submitted report acknowledges that whilst the current and most recent use of the site is as a car dealership it was previously used as a petrol station. On foot of this previous use this report indicates that a study was carried out by Environmental Risk Solutions in January, 2019, which indicated that there is potential to encounter localised residual contamination on the former petrol station part of the site.
- 8.7. I note for clarity that the location of this former use relates to the north east part of the site.
- 8.8. The submitted report considered that this area of the site remains undisturbed as it could not be remediated due to the presence of buried live services. It was therefore recommended from this study that environmental soil samples be collected on the rest of the site during future geotechnical investigations of the site to test for waste acceptance criteria so that waste management considerations can be considered in advance of construction activities commencing.

- 8.9. In terms of services on site it is noted in the submitted report that the proposed development would require the diversion of an existing 525mm concrete surface water pipe traversing the site.
- 8.10. This I note is unchanged by the amended design proposal put forward by the applicant as part of their further information response.
- 8.11. In relation to this pipe, it is proposed to intercept it on the southern boundary of the site where it will be directed to Herberton Road and reconnected into the existing public network.
- 8.12. This proposal also seeks the construction of a new gravity surface water sewer to cater for the proposed developments runoff which will discharge into the 600mm combined sewer on Herberton Road.
- 8.13. I also note that the proposal includes the decommissioning of 1920s watermain and to service the new development by 150mm diameter watermain off the existing 150mm watermain on Herberton Road.
- 8.14. In terms of the Project Area of Influence the submitted report considers that the primary effect would be on the site, but a wider area of influence arises in terms of noise disturbance (Note: 1km); Air Pollution (Note: 10km); Surface Water (Note: 15km), with an additional 2km from connecting transitional waters to coastal areas; and any supporting habitat for Natura 2000 sites within 15km radius.
- 8.15. It also identifies the existing waterbodies within the vicinity of the site as the Grand Canal which is within 80m; the River Poddle which is within 1.2km and the Camac River which is 978m from the site. These are lateral separation distances.
- 8.16. Table 4-1 of the report lists the 13 closest Natura 2000 sites to the appeal site. With I note North Bull Island SPA (Site Code: 004006) being the nearest at 5.5km and South Dublin Bay SAC (Site Code: 00210) being 5.6km away from the site. For clarity Table 4.1 lists the Natura 2000 sites within a 15km (plus hydrological connectivity extension) Zone of Influence of the proposed development as follows:

| Natura 2000 Site            | Site Code | Approx. direct distance from site |
|-----------------------------|-----------|-----------------------------------|
| South Dublin Bay SAC        | 00210     | 5.6km                             |
| Rye Water Valley/Carton SAC | 01398     | 14.4km                            |

|  |        |        |
|--|--------|--------|
| Baldoyle Bay SAC                         | 00199  | 13.3km |
| Howth Head SAC                           | 00202  | 14.3km |
| Glenasmole Valley SAC                    | 01209  | 10km   |
| Wicklow Mountains SAC                    | 02122  | 10.4km |
| North Dublin Bay SAC                     | 00206  | 6.8km  |
| Rockabill to Dalkey Island SAC           | 03000  | 13.8km |
| South Dublin and River Tolka Estuary SPA | 004024 | 5.8km  |
| North Bull Island SPA                    | 004006 | 5.5km  |
| Dalkey Islands SPA                       | 004172 | 14.8km |
| Baldoyle Bay SPA                         | 004016 | 13.3km |
| Wicklow Mountains SPA                    | 004040 | 10.4km |

8.17. Table 4-2 evaluates and screens the proposed development to assess if full Appropriate Assessment is required. This assessment examines the implications of proceeding with the project in view of the conservation objectives for the protected habitats. In relation to the nearest Natura 2000 site, I note it sets out the following:

| Site Name                    | Brief   | Qualifying Interests   | Project Relevant Threats/ Pressures: Impact (Source)  |
|------------------------------|---|--|---|
| <b>North Bull Island SPA</b> | <i>"The North Bull Island sand spit is a relatively recent depositional feature, formed as a result of improvements to Dublin Port during the 18th and 19th centuries. The sediment which forms the island is predominantly glacial in origin and siliceous in nature. A well-developed dune system runs the length of the island, with good examples of embryonic, shifting marram and fixed dunes, as well as excellent examples of humid dune slacks. Extensive salt marshes also occur. Between the island and the mainland occur two sheltered intertidal areas which are separated by a solid causeway constructed in 1964. The seaward side of the island has a fine sandy</i> | <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Shoveler (<i>Anas clypeata</i>) [A056]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> | <p>Discharges</p> <p>Walking, horse-riding, and non-motorised vehicles</p> <p>Nautical sports</p> <p>Bait Digging/collection</p> <p>Bridge, Viaduct</p> <p>Shipping lanes</p> <p>Industrial or commercial areas</p> <p>Other patterns of habitation</p> <p>Roads, motorways</p> <p>Golf course</p> <p>Continuous urbanisation</p> |



|                                    |   |  |  |
|------------------------------------|---|--|--|
|                                    | <p>beach. Nature conservation is a main land use within the site (NPWS 2018).</p> <p>The site is among the top ten sites for wintering waterfowl in the country. It supports internationally important populations of Brent Goose and Bar-tailed Godwit and is the top site in the country for both of these species. A further 14 species have populations of national importance, with particular notable numbers of Shelduck (<i>Tadorna Tadorna</i>), Pintail (<i>Anas acuta</i>), Grey Plover, and Red Knot. The SPA is a regular site for passage waders such as Ruff (<i>Philomachus Redshank</i> (<i>Tringa erythropus</i>)). The site supports Short-eared Owl (<i>Asio flammeus</i>) in winter. The site provides both feeding and roosting areas for the waterfowl species. Habitat quality for most of the estuarine habitats is very good. The site has a population of the rare Petalwort which is the only known station away from the western seaboard as well as five Red Data Book vascular plant species and four bryophyte species. (NPWS 2018e)”</p> | <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Sanderling (<i>Calidris alba</i>) [A144]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Turnstone (<i>Arenaria interpres</i>) [A169]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Wetland and Waterbirds [A999]</p> |  |
| <p><b>South Dublin Bay SAC</b></p> | <p>“This intertidal site extends from the South Wall at Dublin Port to the West Pier at Dun Laoghaire, c.5km. At their widest, the intertidal flats extend for almost 3km. The seaward boundary is marked by the low tide mark, while the landward boundary is now almost entirely artificially embanked. Several permanent channels exist, the largest being Cocker Lake. A small sandy beach occurs at Merrion Gates, while some bedrock shore occurs near Dun Laoghaire. A number of small streams</p>   | <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Embryonic shifting dunes [2110]</p>  | <p>Urbanised areas, human habitation non-motorised nautical sports</p> <p>Reclamation of land from sea, estuary, or marsh</p> <p>Industrial or commercial areas</p> <p>Paths, tracks, cycling tracks</p> <p>Bait digging/collection</p> <p>Marine water pollution</p> <p>Nautical sports</p> |

|  |   |  |  |
|--|---|--|--|
|  | <p><i>and drains flow into the site. The designated site possesses a fine and fairly extensive example of intertidal flats. Sediment type is predominantly sand, with muddy sands in the more sheltered areas. A typical macro-invertebrate faunal assemblage exists within the SAC. The SAC has the largest stand of Dwarf Eelgrass (zostera nolti) on the east coast. It also supports part of the important wintering waterfowl populations of Dublin Bay. It regularly hosts an internationally population of Brent Geese, plus nationally important numbers of at least a further 6 species, including Bar-tailed Godwit. It is also a regular autumn roosting ground for significant numbers of Sterna terns, including Roseate Terns (S. dougallii) (NPWS 2018b)."</i></p> |  | <p>Walking, horse-riding, and non-motorised vehicles</p> <p>Roads, motorways</p> <p>Discharges</p> <p>Accumulation of organic material</p> |
|--|---|--|--|

- 8.18. Under Section 5 of the submitted report the cumulative impacts of other relevant plans and projects are considered.
- 8.19. At the time this report was prepared I note that the ABP-312300-21, SHD appeal case was with the Board and had not been determined. Since this application has been determined a new application is with the Planning Authority for its determination under P.A. Ref. No. LRD6020/23-S3. This application was made after this appeal was lodged for the Boards determination and is currently subject to a request of further information.
- 8.20. I also note that as part of the preparation of the current Development Plan that a Natura Impact Assessment was carried out, in which the City Councils commitments to the Habitats Directive and Appropriate Assessment were set out as part of preventing inappropriate developments that could result in adverse impacts on the conservation objectives of Natura 2000 sites.
- 8.21. The AA Screening assessment sets out that during the construction phase that there are no direct surface water pathways to any Natura 2000 sites with the closest waterbody being the Grand Canal at approximately 80m from the site with this

waterbody entering Dublin Bay via Grand Canal Dock approximately 4km away from the site to which South Dublin Bay SAC, North Dublin Bay SAC, Rockabill to Dalkey Island SAC, South Dublin and River Tolka Estuary SPA, as well as North Bull Island SPA.

- 8.22. It further sets out that there is no surface water pathway between the site and the Grand Canal and that it is unlikely that sediments or pollutants from the construction phase will enter the canal and additionally should any run-off reach the canal during a period of heavy rainfall that due to the artificial nature of this waterbody that it is unlikely to be a viable pathway in which pollutants or sediments can travel into Dublin Bay.
- 8.23. It also set out that the Grand Canal is not connected to the site and is not a viable pathway as it is an artificial waterbody in which water does not move naturally into Dublin Bay.
- 8.24. Moreover, it contends that impacts via groundwater will likely be local only and any pollutants from the site will likely be filtered out before reaching any natural waterbody.
- 8.25. During operational phase it is considered that any storm water run-off will be fed into the established combined sewer system of Dublin City and that foul water will be collected to the main sewer and treated in the Ringsend Waste Water Treatment Plant.
- 8.26. Additionally, an attenuation tank with hydro brake would be installed to control water flow off site into sewers during heavy rainfall.
- 8.27. It is therefore considered by the authors of this submitted report that there is an absence of pathways during construction and operational phases to Natura 2000 sites from surface water pathways.
- 8.28. In relation to groundwater, the submitted report sets out that the proposed development would be constructed on made ground with this site being within the groundwater body of 'Dublin' (IE\_EA\_G\_008). This groundwater body is described as: *"poorly productive bedrock encompassing most of Dublin City"*. It is further described that the bedrock of the site is composed of Dark limestone & shale and that the subsoil is made of ground with Low Permeability with the groundwater vulnerability categorised as 'High' and the site classified as 'Locally Important Aquifer'.
- 8.29. In relation to the former petrol station use, I again note that it is proposed to firstly remove below ground infrastructure, to excavate to an expected depth of 2.7m and to

construct the basement and area for the attenuation tank. With this including the decommissioning of petrol tanks. It is set out that there is no connectivity through groundwater in terms of pathways between the proposed development and any Natura Site, including the Rye Water Valley/Carlton SAC which lies within the same groundwater body.

- 8.30. In relation to Land and Air, given the distance between the site and the nearest Natura 2000 sites the authors of the submitted report contend that it is unlikely that any adverse impacts would arise from land-based activities associated with the proposed development.
- 8.31. The submitted report concludes that the project would have no direct or measurable indirect impacts on any European sites near the appeal site and that no significant impacts of the qualifying interests of any SPA or SAC is likely, either alone or in combination with other plans or projects. With this conclusion based upon best scientific judgement.
- 8.32. Having reviewed the AA Screening Report, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European Sites. In saying this I note the comments of the Third Party in relation to their concerns with regards to the area referred to in this report.
- 8.33. On this matter, Section 2.2 of this report provides a description of the proposed project as per the planning notices and sets out a combined floor area for the retail element but in relation to the residential component sets out that it relates to 60 no. apartments providing no floor area in relation to the same or no cumulative floor area.
- 8.34. I also note to the Board that Section 6.2.7 of the submitted Appropriate Assessment Screening report refers to a figure of 4,510-sq.m. I consider that this area relates to the area of the site and not to the floor area of the proposed development as originally submitted to the Planning Authority. I therefore consider that Section 6.2.7 may give rise to confusion in this regard but should be taken as part of the purpose of this part of the report to provide a description of likely direct, indirect, or secondary impacts of the project (either alone or in combination with other plans or projects) on Natura 2000 sites with it setting out that the size and scale of the project element. Alongside providing commentary in relation to the statement of “the proposed project is 4510m<sup>2</sup>”.

The commentary clearly sets out that it relates to and involves the decommissioning of the former Springfield Service Station and the demolition of existing building as well as decommissioning of existing private services within the site through to the construction of an under-croft car park and a five-storey mixed use retail and residential building on the subject site.

- 8.35. I am satisfied that the assessment provided is based on the proposed development as submitted and during its determination by the Planning Authority the nature and scale of the proposed development has been reduced in floor area and dwelling unit number. As such the proposed project potential impacts arising from the construction and operational phases through to cumulative/in-combination effects on the Natura 2000 sites within its zone of influence is reduced. In either case the proposed project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site.
- 8.36. I further note that the proposed development is not located within or immediately adjacent to any European site. The nearest European sites are situated at significant lateral separation distance with the closest being as said North Bull Island SPA and South Dublin Bay SAC which are located c5.5km to 5.6km away from the site respectively.
- 8.37. The site is also close to the Proposed Natural Heritage Areas Grand Canal (Site Code: 002104). This is located just over 80 metres to the north at its nearest point.
- 8.38. There are no direct pathways between the site and the Natura 2000 site network.
- 8.39. I acknowledge that there are potential indirect connections to the European sites within Dublin Bay via watercourses and the wider drainage network such as the indirect connection via the Ringsend Waste Water Treatment Plant. However, the existence of these potential pathways does not necessarily mean that potential significant effects would arise from the proposed development if permitted.
- 8.40. There are no surface watercourses in the immediate vicinity of the site that would provide a pathway to the European Site network although I note that in an adverse weather event that the site includes Flood Zone A and B lands with there being historic incidents of fluvial flooding. I note that surface water and foul water would discharge to the combined sewer on Herberton Road for onward treatment at the Ringsend

WWTP. Whilst this would result in an increased loading on the Ringsend WWTP, the scale of the additional loading that would arise from the proposed development is minor in context. There is also potential for an interrupted and distant hydrological connection between the site and sites in Dublin Bay due to this pathway. However, such an occurrence could arise during an extreme fluvial event, and the discharge from the site would be negligible in the context of the overall licenced discharge at Ringsend WWTP, and thus its impact on the overall discharge would in my view be negligible.

- 8.41. Therefore, having regard to the limited scale of the development, the absence of any hydrological pathways, the dilution capacity of Dublin Bay, the insignificant additional loading on the Ringsend WWTP, the locational factors of this urban serviced brownfield infill site, I am satisfied that there is no potential for the development to result in significant effects on Natura 2000 sites within Dublin Bay.
- 8.42. I concur with the drainage measures proposed with these including but not limited to sustainable drainage measures in keeping with best accepted practices and the requirements of the recommend conditions of the Council's Drainage Division in the event of a grant of planning permission, are standard in nature opposed to mitigation.
- 8.43. In addition, the construction phase standard control pollution measures to be used to prevent sediment or pollutants from leaving the construction site and entering the water system are standard in nature regarding the brownfield nature of the site and its development history to date.
- 8.44. As such, I am satisfied that any proposals incorporated within the development, or required by condition, which in my view should include a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects, 2021. This together with the measures proposed constitute standard best practice and that no mitigation measures outside of those that are standard in nature are relied upon for Appropriate Assessment screening.
- 8.45. Conclusion
- 8.45.1. Having regard to the foregoing and the potential impacts of the proposed development, I would state that the nature and scale of the proposed development is not exceptional

for city centre development in terms of its complexity or magnitude, either at construction phase or operational phase. 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.

## 9.0 Recommendation

9.1. I recommend that permission be **granted**.

## 10.0 Reasons and Considerations

10.1. Having regard to the following:

- (a) the proposed development is consistent with permissible development on 'Z10' zoned land as set out in the Dublin City Development Plan, 2022-2028;
- (b) the proposed development generally accords with the policies and objectives set out in the Dublin City Development Plan, 2022- 2028, relevant to the nature and scale of development sought;
- (c) the regional policy objectives set out under the Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES), 2019;
- (d) the national policy objectives set out in the Project Ireland 2040 - National Planning Framework (NPF), 2018-2040;
- (e) Rebuilding Ireland Action Plan for Housing and Homelessness, 2016;
- (f) Housing for All – A New Housing Plan for Ireland, 2021;
- (g) Climate Action Plan, 2023;
- (h) National Sustainable Mobility Policy, 2022;
- (i) the provisions and guidance of Section 28 guidelines including the Urban Development and Building Heights, Guidelines for Planning Authorities, 2018; the Design Manual for Urban Roads and Streets (DMURS); the Guidelines for Planning Authorities on Sustainable Residential Development and Compact Settlements Guidelines, 2024; the Retail Planning Guidelines for

Planning Authorities (2012) and the Retail Design Manual; the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009; through to the Appropriate Assessment of Plans and Projects in Ireland - Guidelines for Planning Authorities (2009, updated 2010);

- (j) the serviced nature of the site that has spare capacity to absorb the quantum of the development sought;
- (k) the availability of services through to facilities in the area that are synergistic with the proposed development;
- (l) the pattern of existing and permitted development in this area;
- (m) the changing nature of this urban neighbourhood with the proposed development's ability to contribute positively and reinforce the emerging pattern of development;
- (n) the planning history of the area;
- (o) the submissions and observations received;
- (p) the documentation on file;
- (q) the Inspectors report;

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable form of mixed-use development in this urban location; it would not seriously injure the residential or visual amenities of the area; it would be acceptable in terms of urban design, height and quantum of development and it would be respectful of the type of development envisaged for 'Z10' zoned land at this locality as provided for under the Dublin City Development Plan, 2022-2028. It is further considered that it would be acceptable in terms of pedestrian and traffic safety as well as it would not give rise to any undue inconvenience for road users and vulnerable users of the public domain. Moreover, the proposed development would provide an appropriate address of 'Z10' zoned land on its southern and easternmost boundary as viewed from Herberton Road as well as would ensure future connectivity to the adjoining lands to the west of the site should they be redeveloped in future. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



## 10.2. **Appropriate Assessment (AA)**

- 10.2.1. The Board completed an 'Appropriate Assessment' screening exercise in relation to the potential effects of the proposed development on designated European sites, considering the nature, scale, and location of the proposed development within a suitably zoned and adequately serviced urban site, the Inspector's Report, and submissions on file.
- 10.2.2. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other plans or projects permitted in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites.

## 11.0 **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 received by the planning authority on the 24<sup>th</sup> day of October, 2022, except as may otherwise be required in order to comply with the following conditions. 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.

**Reason:** In the interest of clarity.

2. The proposed development shall be amended as follows:
  - a) The Corporate Lidl Signage in the east elevation onto Herberton Road indicated as sign 'L.2' shall be reduced to 1.5 metres in height and width.
  - b) The Corporate Signage on the north and south elevations indicated as 'L.5' and 'L.7' shall be omitted in entirety.

**Reason:** In the interests of visual amenity and residential amenity.

3. Details of the materials, colours, and textures of all the external finishes to the proposed building shall be as submitted with the application, unless otherwise agreed in writing with, the Planning Authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of visual amenity.

4. Prior to the occupation of the development, a schedule of proposed uses for the proposed retail / commercial units shall be submitted for the written agreement of the planning authority. Class 2 office/professional uses shall not be permitted without a separate grant of planning permission. In addition, prior to the occupation of these units, details of openings, signage, lighting, shopfronts, and layout/window treatment of the subject unit shall be agreed in writing with the planning authority.

**Reason:** In the interests of clarity and the proper planning and sustainable development of the area.

5. No amalgamation of units or subdivision of any residential and retail unit shall take place without a prior grant of planning permission.

**Reason:** To control the layout and scale of the development, in the interest of protecting the vitality and viability of the area and in the interest of orderly development.

6. (a) Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This shall include identification and associated signage, including any ancillary lighting of the Retail Units 1, 2 and 3. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme. Any subsequent changes to the signage and lighting of the non-residential units from that agreed shall be subject to prior written agreement with the Planning Authority.

**Reason:** In the interests of orderly street naming and numbering; to enhance urban legibility, to retain local place name associations and urban legibility.

7. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme and any subsequent changes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any change in occupancy/use.

**Reason:** In the interest of urban legibility.

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development/installation of lighting. All lighting used within the site curtilage shall be directed and cowled so as not to interfere with passing traffic or residential properties in its vicinity. The agreed lighting scheme shall be provided prior to the making available for occupation of any apartment and retail unit and shall have regard to impact in terms of biodiversity.

**Reason:** In the interests of amenity and public safety.

9. Prior to commencement of any works on site details of the following:
  - (a) Full details of proposed green roof in the podium roof garden.
  - (b) Privacy screens between balconies of the apartments, including heights and materials.
  - (c) Clarity that the balustrading to balconies are safe for children.
  - (d) That the balcony floors are self-draining.
  - (e) Provision of weather proof seating areas and facilities to allow continued use of the podium roof garden by residents in adverse weather.
  - (f) Irrigation Measures for the planting in the podium roof garden.

Shall be submitted to, and agreed in writing with, the planning authority. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interests of proper planning and sustainable development and to safeguard the amenities of the area.

10. Access to the podium roof garden shall be restricted to residents of the scheme between the hours of 0700 and 2200 Monday to Sunday.

**Reason:** In the interests of residential amenity.

11. No additional development shall take place above roof level, including lift motors, air handling equipment, storage tanks, ducts, or other external plant other than those shown on the drawings hereby approved, unless authorised by a prior grant of Planning Permission.

**Reason:** To safeguard the amenities of surrounding occupiers and the visual amenities of the area in general.

12. Notwithstanding the provisions of the Planning & Development Regulations 2001 (as amended), no advertisement signs (including any signs installed to be visible through the windows); advertisement structures, banners, canopies, flags, or other projecting element shall be displayed or erected on the building or within the curtilage, or attached to the glazing without the prior grant of planning permission.

**Reason:** In the interests of visual amenity.

13. The sound levels from any loudspeaker announcements, music or other material projected in or from the premises shall be controlled so as to ensure the sound is not audible in adjoining premises or at two metres from the frontage.

**Reason:** In the interests of environmental amenity.

14.No external security shutters shall be erected for any of the retail/commercial premises hereby permitted unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interest of the amenities of the area/visual amenity.

15.All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

**Reason:** In the interest of residential amenity.

16.All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

17.The road network serving the proposed development, including turning bays, junction with the public road, parking areas, footpaths and kerbs, access road to service areas shall be in accordance with the detailed construction standards of the Planning Authority for such works. In this regard the developer shall comply with the following requirements of the Transportation Planning Division of Dublin City Council:

a) Prior to commencement of development and on appointment of the demolition contractor, a detailed Demolition Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended demolition practice for the development, a detailed traffic management plan, hours of working, noise and dust management measures, and off-site disposal of demolition waste.

b) Prior to commencement of development and on appointment of the main contractor, a detailed Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, construction phasing and programme, a detailed traffic management plan, hours of working, noise and dust management measures, and off-site disposal of construction waste.

c) A minimum of 64 no. residential cycle parking spaces inclusive of 3 no. cargo spaces, a minimum 6 no. staff bike spaces, and a minimum of 29 no. visitor cycle parking spaces inclusive of 2 no. cargo spaces shall be provided for the development. Resident and staff cycle parking shall be secure, conveniently located, sheltered and well lit. Shower and changing facilities shall be provided for staff. Key/fob access shall be required to bicycle compounds. Visitor cycle parking design shall allow both wheel and frame to be locked. The cycle parking proposed shall be fully completed and operational prior to the occupation of any of the residential units.

d) A maximum 54 car parking spaces are permitted including 28 no. residential spaces inclusive of 2 no. car share spaces, and 26 no. retail spaces. A minimum 20% of spaces shall be provided with for electrical charging equipment and 100% of parking spaces shall be ducted to facilitate future cabling to serve charging points for Electric Vehicles. Car parking spaces shall not be sold, rented, or otherwise sub-let or leased to other parties.

e) Prior to the completion and occupation of the development, a Parking Management Plan shall be prepared for the development and submitted for the written agreement of the Planning Authority. This shall indicate how spaces will be assigned and segregated by use and how use of the car parking will be continually managed. Prior to the completion and occupation of the development, a Mobility Management Plan incorporating a Car Parking Management Plan shall be submitted for written agreement with the Planning Authority. The applicant shall undertake to implement the measures outlined in the Mobility Management Framework/Plan and to ensure that future tenants of the proposed development comply with this strategy. A Mobility Manager for the overall scheme shall be appointed to oversee and co-ordinate the preparation of individual plans.

f) Prior to the commencement of the development, a drawing detailing proposed areas including footpath provision to be taken in charge shall be agreed in writing with the planning authority.

g) Prior to the commencement of the development, works to the public road including alterations to the public footpath, road signs, public lighting, landscaping, and the relocation of the bus stop shall be agreed in writing with the planning authority. The provision of a bus shelter alongside the bus stop will be subject to separate statutory process. All works shall be at the applicant's expense.

h) Details of the materials proposed in public areas is required and shall be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division.

i) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.

j) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

18. The developer shall comply with all requirements of the planning authority in relation to all works to be carried out on the public road, the provisions for access from the adjoining lands to the west to Herberton Road should it be developed in future, and areas to be taken in charge, including planting along the public road and agreement of any works that would potentially interfere with the existing street tree on the public domain adjoining the north eastern corner of the site.

**Reason:** In the interest of the proper planning and sustainable development of the area.

19. Prior to the commencement of development on site, an up-dated Flood Risk Assessment shall be submitted with this being informed by direct consultation between the OPW and the applicant/developer in relation to this subject site, shall be submitted to the Planning Authority agreed in writing. This assessment shall be prepared by a suitably qualified and experienced professional on such matters.

**Reason:** In order to allow the planning authority to assess the impact of these matters on the area in a manner that accords with best practice before development commences and in the interests of the environment and public health.

20. Prior to the commencement of development on site, a 'Universal Design Statement' which has regard to the Building for Everyone, a Universal Design Approach and Universal Design Guidelines for Homes in Ireland (National Disability Authority) together with any changes arising from the same, is submitted to the Planning Authority and agreed in writing. This statement shall be prepared by a suitably qualified and experienced professional with expertise in universal design of buildings and their associated spaces.

**Reason:** In order to allow the planning authority to assess the impact of these matters and in the interest of ensuring that the development meets required standards of universal design in the interests of orderly development.

21. Prior to the commencement of development, a Climate Action and Energy Statement shall be submitted for written approval of the planning authority. This shall demonstrate how low carbon energy and heating solutions will be implemented in this mixed-use building. This statement shall be prepared by a certified engineer with suitable professional expertise and experience on this matter and shall demonstrate compliance with Section 15.7.3 of the Dublin City Development Plan, 2022-2028.

**Reason:** In order to allow the planning authority to assess the impact of these matters before development commences, to ensure that the development accords with Section 15.7.3 of the Dublin City Development Plan, 2022-2028.



22. Prior to the opening of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking, car sharing through to carpooling by residents, staff, visitors, and customers to this development and to reduce and regulate the extent of resident and staff parking. The mobility strategy shall be prepared and implemented by the management company for all residential and retail/commercial units within the scheme hereby permitted. Details to be agreed with the planning authority shall include the provision of centralised facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

**Reason:** In order to allow the planning authority to assess the impact of these matters before development commences and in the interest of encouraging the use of sustainable modes of transport as well as orderly development.

23. The developer shall comply with the following requirements of the Drainage Division of Dublin City Council:

a) The developer shall comply with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0 (see [www.dublincity.ie](http://www.dublincity.ie) Forms and Downloads).

b) The drainage for the proposed development shall be designed on a completely separate foul and surface water system with surface water discharging to the public surface water system. A revised drainage layout shall be submitted in this regard for written agreement with Drainage Division prior to commencement of the development.

c) A connection from this development to the public Surface Water sewer network will only be granted when the developer has obtained the written permission of the Drainage Division and fulfilled all the planning requirements including the payment of any financial levies. All expense associated with carrying out the connection work are the responsibility of the developer. Developers are not permitted to connect to the public Surface Water network system without written permission from the Drainage Division. Any unauthorised connections shall be removed by the Drainage Division at the developer's expense. A licence will be required from the

Drainage Division to allow the connection work to be carried out. Permission of the Roads Dept must also be obtained for any work in the public roadway.

d) All surface water discharge from this development must be attenuated to two litres per second in accordance Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

e) The development shall incorporate Sustainable Drainage Systems in the management of surface water. Full details of these shall be agreed in writing with Drainage Division prior to commencement of construction.

f) A CCTV survey of the existing public surface water sewer crossing the site shall be submitted to the Drainage Division prior to works commencing on site.

g) Exact details of the proposed diversion of public surface water sewer crossing the site shall be agreed in writing with Drainage Divisions prior to commencement of the development.

h) As-constructed drawings of the diverted public surface water sewer complete with CCTV survey, to a standard specified by Drainage Division, must be submitted to Drainage Division for written sign-off. This must be submitted no later than the completion of the development works on site. For details, please refer to Section 5 of the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

i) An appropriate petrol interceptor shall be installed on the internal drain from the car park. Please refer to section 20 of the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

j) Flood mitigation measures identified in the Flood Risk Assessment prepared by AECOM Consulting Engineers shall be fully implemented.

k) The outfall surface water manhole from this development must be constructed in accordance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

l) All private drainage such as, downpipes, gullies, manholes, armstrong junctions, etc. are to be located within the final site boundary. Private drains should not pass through property they do not serve.

In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure a satisfactory standard of development.

24. The developer shall enter into water and waste water connection agreement(s) with Uisce Eireann, prior to commencement of development.

**Reason:** In the interest of public health and orderly development.

25. The site shall be landscaped and earthworks carried out in accordance with a finalised detailed comprehensive scheme of landscaping, which shall be submitted to the Planning Authority for their written agreement prior to the commencement of development, with this report including but not limited to measures to safeguard the street tree located on the public domain alongside the north-easternmost corner of the site. Additionally, a completion certificate of the agreed landscaping scheme shall be submitted to the Planning Authority upon completion of works and prior to occupation. These documents shall be prepared and the landscaping scheme carried out by an appropriately qualified and experienced landscape professional.

**Reason:** In order to allow the planning authority to assess these matters, in the interest of amenity and orderly development.

26. (a) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of the mature street tree on the public footpath adjoining the north eastern corner of the site , shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained.

(b) No works shall take place on site until a construction management plan that includes specified measures to be taken for the protection and retention of this adjoining street tree together with proposals to prevent compaction of the ground over the roots of the trees, has been submitted to, and been agreed in writing with, the planning authority. Any excavation within the tree protection area around this tree shall be carried out using non-mechanised hand tools only.

**Reason:** To ensure that the adjoining street tree is not damaged or otherwise adversely affected by building operations and to protect the visual amenities of the area.

- 27.(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 for each apartment and retail/commercial unit shall be submitted to, and agreed in writing with, the Planning Authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan. (b) This plan shall provide for screened communal bin stores, the locations, and designs of which shall be included in the details to be submitted.

**Reason:** In the interest of residential amenity and to ensure the provision of adequate refuse storage.

28. Prior to commencement of development, the developer shall engage an appropriately qualified environmental consultant to carry out a site contamination report complete with appropriate remediation measures that accord with Section 15.18.12 of the Dublin City Development Plan, 2022-2028. Where any contaminated land on site requires appropriate remediation prior to redevelopment, with this including the removal of material requiring a licence under the Waste Management Act, 1996, as amended, the licence for such works shall accompany this report. The report shall be submitted to the planning authority for written agreement prior to the commencement of any development on site and all the agreed remediation measures shall be carried out in full where required.

**Reason:** In the interest of public health and to ensure a proper standard of development.

29. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out

in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of sustainable waste management.

30. Construction and demolition waste shall be managed in accordance with a Construction Waste and Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery, and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

31. 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 a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

32. Site development and building works shall be carried out only between the hours of 0800 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 where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

33. 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.

**Reason:** In order to ensure a satisfactory standard of development, in the interests of residential amenity.

34. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) 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.

**Reason:** To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interests of orderly development.

35. 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.

**Reason:** To comply with the requirements of Part V of the Planning and Act 2000, as amended, and of the housing strategy in the development plan of the area.

36. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, internal common areas (residential and commercial), open spaces, landscaping, roads, paths, parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, before any of the residential or commercial units are made available for occupation.

**Reason:** To provide for the future maintenance of this development in the interest of residential amenity and orderly development.

37. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development;
- (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works; and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

38. 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

39. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

40. The developer shall pay a financial contribution to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of public open space requirements in respect of public open space benefitting 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, as amended. The amount of the contribution shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development in lieu of the provision of the required public open space within the scheme.

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought*

*to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

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Patricia-Marie Young  
Planning Inspector

30<sup>th</sup> day of January 2024.

## Appendix 1 - Form 1 - EIA Pre-Screening

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| <b>Case Reference</b>  | <b>ABP-315314-22</b>  |   |
| <b>A. Case Details</b>   |   |   |
| <b>Proposed Development</b>  | Demolition of all existing buildings on site and the construction of a mixed-use retail, commercial and residential development. The residential development component of this proposed development contains 60 apartments together with associated works and services on a site of 0.45ha. |   |
| <b>Development Address</b>   | Bright Ford Motors, Herberton Road, Dublin 12, D12 HT99.  |   |
| <b>1.</b><br><b>Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br><br>(that is involving construction works, demolition, or interventions in the natural surroundings) | Yes   |   |
| <b>Overview</b>  | <b>Yes/No/ NIA</b>  | <b>Comment (if relevant)</b>  |
| <b>1. Was a Screening Determination carried out by the PA?</b>   | Yes   |   |
| <b>2. Has Schedule 7A information been submitted?</b>  | Yes   |   |
| <b>3. Has an AA screening report or NIS been submitted?</b>  | Yes   | Screening for Appropriate Assessment provided.  |
| <b>4. Is an IED/IPC or Waste Licence (or review of Licence) required from the EPA? If YES has the EPA commented on the need for an EIAR</b>  | No  |   |
| <b>5. Have any other relevant assessments of the effects on the</b>  | Yes   | The following has been submitted with the application: <ul style="list-style-type: none"> <li>Outline Construction &amp; Demolition Waste Management</li> </ul> |

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| environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA |                                   | <ul style="list-style-type: none"> <li>Outline Construction Management Plan</li> <li>Flood Risk Assessment</li> </ul> <p><b>*An SEA, AA and SFRA was undertaken by the Planning Authority in respect of the Dublin City Development Plan, 2022-2028.</b></p>  |   |
| <b>B. EXAMINATION</b>  | Response:<br>Yes/No/<br>Uncertain | Where relevant, briefly describe the characteristics of impacts (i.e., the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact) Is this likely to result in significant effects on the environment?<br><br>Yes/ No/ Uncertain | Where relevant, briefly describe the characteristics of impacts (i.e., the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact) Is this likely to result in significant effects on the environment?<br><br>Yes/ No/ Uncertain |
| <b>1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)</b>                |                                   |   |   |
| <b>1.1</b><br><b>Is the project significantly different in character or scale to the existing surrounding or environment?</b>        | <b>No</b>                         | Though the proposed development would give rise to taller and more dense building at this location the overall proposed mixed-use development is not regarded as being of a height, scale or character that would be significantly at odds with the pattern of development sought for 'Z10' zoned land under the Development Plan.  | <b>No</b>   |
| <b>1.2</b><br><b>Will construction, operation,</b>   | <b>Yes</b>                        | The proposed development will change the subject site from its low site coverage of   | <b>No</b>   |

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| decommissioning, or demolition works causing physical changes to the locality (topography, land use, waterbodies)?  |     | commercial in use buildings (i.e., car sales showroom and servicing warehouse and outbuilding type structures) with most of the site in hard stand land to one that is substantially built over by a five-storey mixed use building. There are no substantive waterbodies on site or adjacent to the site.  |    |
| 1.3<br>Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals, or energy, especially resources which are non-renewable or in short supply? | Yes | Construction materials will be typical of the type of urban development proposed under this application.  | No |
| 1.4<br>Will the project involve the use, storage, transport, handling, or production of substance which would be harmful to human health or the environment?  | Yes | <p>Possible petrol tank and associated infrastructure related to the previous use of the site as a petrol station with the potential for localised hot spots of fuel contamination has been identified as a potential concern below ground on this site despite works in 2007 to the site as part of decommissioning this use. Proposals for safe removal and disposal of this material have been outlined and would be finalised as part of the project Construction and Demolition Waste Management Plan and Construction Management Plan. As a precaution these should be finalised to ensure works accord with the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021).</p> <p>Additionally, demolition and construction activities by their nature will require the use of potentially harmful materials, such as fuels and other such substances. Use of such materials would be typical for construction sites. Any impacts would be localised and temporary in nature. It is standard practice for such works to accord to the implementation of the standard measures outlined in a Construction Environmental Management Plan, Construction and Demolition Waste Management Plan, and a Resource and Waste Management Plan. These would satisfactorily mitigate potential impacts. No</p> | No |

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|   |            | operational impacts in this regard are anticipated.   |           |
| <p><b>1.5</b></p> <p><b>Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</b></p>     | <b>No</b>  | <p>Construction activities will require the use of potentially harmful materials, such as fuels and other similar substances, and will give rise to waste for disposal. The use of these materials would be typical for construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature and with the implementation of standard measures outlined in a Construction Environment Management Plans, Construction and Demolition Waste Management Plans and Resource and Waste Management Plan would satisfactorily mitigate the potential impacts. Operational waste would be managed through a waste management plan to obviate potential environmental impacts and petrol interceptors would capture potential pollutant/contaminants from the site. Other significant operational impacts are not anticipated.</p> | <b>No</b> |
| <p><b>1.6</b></p> <p><b>Will the project lead to risks of contamination of land or water from releases?</b></p>                             | <b>No</b>  | <p>No significant risks are identified. Operation of standard measures outlined in Construction Environment Management Plans, Construction and Demolition Waste Management Plans and Resource and Waste Management Plan will satisfactorily mitigate emissions from spillages during construction. The operational development will connect to public mains drainage and discharge surface waters only after passing through a fuel interceptor and a hydro brake to the public network. Surface water drainage will be separate to foul drainage within the site and leaving the site.</p>   | <b>No</b> |
| <p><b>1.7</b></p> <p><b>Will the project cause noise and vibration or release of light, heat, energy, or electromagnetic radiation?</b></p> | <b>Yes</b> | <p>During the demolition and construction phases there is potential for noise, dust through to vibration emissions. Such emissions will be localised, short term in nature and their impacts would be suitably mitigated by the operation of standard measures listed in a Construction Environment Management Plans and Construction and Demolition Waste Management Plans. Management of the scheme in accordance with an agreed</p>  | <b>No</b> |

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|  |            | management plan will mitigate potential operational impacts.   |           |
| <b>1.8</b><br><br><b>Will there be any risks to human health, for example due to water contamination or air pollution?</b> | <b>Yes</b> | Demolition and construction activity is likely to give rise to dust and noise emissions. Such construction impacts would be temporary and localised in nature and the application of standard measures within a Construction Environment Management Plans and Construction and Demolition Waste Management Plans together with limiting construction hours to standard hours and days permitted would satisfactorily address potential risks on human health. No significant operational impacts are anticipated, with water supplies in the area provided via piped services. | <b>No</b> |
| <b>1.9</b><br><br><b>Will there be any risk of major accidents that could affect human health or the environment?</b>      | <b>No</b>  | No significant risk is predicted having regard to the nature and scale of development. Any risk arising from demolition and construction will be localised and temporary in nature. The design of the scheme has had regard to the Flood Zone A and B situation as well as best practices in relation to the same. No vulnerable uses would be provided at ground floor level and flood design measures are incorporated into the overall buildings design. The site is outside the consultation / public safety zones for Seveso / COMAH sites.                               | <b>No</b> |
| <b>1.10</b><br><br><b>Will the project affect the social environment (population, employment)</b>                          | <b>Yes</b> | The proposed development would result in an increase in population of this urban area by the forty apartment units it would contain. Housing would be provided to meet existing demand in the area. Additionally, the retail/commercial units when operational would not only provide additional retail offer to the existing population of this area which would make it more resilient and sustainable but also would generate employment opportunities in this locality. Thus, giving rise to positive social environment impacts.  |           |
| <b>1.11</b><br><br><b>Is the project part of a wider large-scale change that could result in</b>                           | <b>No</b>  | The proposed development relates to an urban parcel of land for which mixed use developments at more compact scale are   | <b>No</b> |

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| cumulative effects on the environment? |  | provided for by way of Z10 land use zoning that in turn would result in a more sustainable urban form at this location. It would not result in adverse large scale cumulative effects on the environment. |  |
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## 2. Location of proposed development

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|---|-----------|--|-----------|
| <p><b>2.1</b></p> <p>Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <p>a) European site (SAC/ SPA/ pSAC/ pSPA)</p> <p>b) NHA/ pNHA</p> <p>c) Designated Nature Reserve</p> <p>d) Designated refuge for flora or fauna</p> <p>e) Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</p> | <b>No</b> | <p>Sensitive ecological sites are not located on site or adjacent to the site. The nearest European sites are listed in Section 5.4 and Section 8 of this report above, with this being the South Dublin Bay SAC (Site Code: 000210) which is situated c5.5km to the east of the site at its nearest point. It is also noted that the Proposed Natural Heritage Area: Grand Canal (Site Code: 002104) is within 80m.</p> <p>The proposed development would not result in significant impacts to any of these sites. Annex II habitats or habitats suitable for protected species, including plants, are not present on the site.</p> | <b>No</b> |
| <p><b>2.2</b></p> <p>Could any protected, important, or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?</p>   | <b>No</b> | <p>This site is an existing urban brownfield site comprised of structures and hard stand. The proposed development would not result in significant impacts to protected, important or sensitive species. Biodiversity measures in the form of additional tree planting is anticipated to be of biodiversity benefit.</p>   | <b>No</b> |
| <p><b>2.3</b></p> <p>Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>  | <b>No</b> | <p>The site and surrounding area do not have a specific conservation status or landscape of particular importance and there are no Protected Structures on site or in its immediate vicinity. The An Archaeological Assessment accompanies this application recommends precautionary archaeological condition of a standard nature should there</p>  | <b>No</b> |



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|   |           | be any surviving features below ground of interest.  |           |
| <p><b>2.4</b></p> <p>Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p> | <b>No</b> | There are no such features in this urban location.   | <b>No</b> |
| <p><b>2.5</b></p> <p>Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwater which could be affected by the project, particularly in terms of their volume and flood risk?</p>       | <b>No</b> | The documentation submitted indicates that the proposed development will implement SUDS measures to control surface water run-off and measures to deal with part of the site's location on Flood Zone A and B land in line with best practices. The proposed development also includes the removal of any residual infrastructure and/or contamination that may remain on site from its previous use as a petrol station. The latter would be a positive outcome. Potential impacts arising from the discharge of surface waters to receiving waters are considered, however, no likely significant effects are anticipated. | <b>No</b> |
| <p><b>2.6</b></p> <p>Is the location susceptible to subsidence, landslides, or erosion?</p>   | <b>No</b> | This is a brownfield site in a relatively flat urban landscape with no evidence of subsidence, landslides, or erosion.   | <b>No</b> |
| <p><b>2.7</b></p> <p>Are there any key transport routes (e.g., National primary Roads) on or around the location which are susceptible to congestion, or which cause environmental problems, which could be affected by the project?</p>      | <b>No</b> | The site benefits from an existing access onto Herberton Road which is not a National Primary Road or a road susceptible to congestion. Additionally, this road connects to regional roads to the north and south with good connectivity to the wider city road network. There are also sustainable transport options available to future residents. The proposed development would not give rise to a significant contribution to traffic congestion in this locality or other environmental problem.   | <b>No</b> |

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| 2.8<br><br>Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?           | No | The site is adjoined by residential development to its south and neighbours' residential development to the east and north. There are no existing community facilities and the like in the immediate setting. The standard measures of a Construction Environment Management Plans and Construction and Demolition Waste Management Plans together with standard conditions limiting construction hours to standard hours and days permitted as well as limiting the operational hours, overspill of light and the like. No significant construction or operational impacts would be anticipated from this proposed development. | No                 |
| <b>3. Any other factors that should be considered which could lead to environmental impacts</b>  |    |  |                    |
| 3.1<br><br>Cumulative Effects: Could this project together with existing and/or approved development result in cumulative effects during the construction/operation phase? | No | No existing or permitted developments have been identified in the immediate vicinity of the site that would have the potential to give rise to significant cumulative environmental effects with the subject project. Any cumulative traffic impacts that may arise during construction would be subject to a project construction traffic management plan.  | No                 |
| 3.2<br><br>Transboundary Effects:<br><br>Is the project likely to lead to transboundary effects?   | No | No transboundary considerations arise.   | No                 |
| 3.3<br><br>Are there any other relevant considerations?  | No | None.  | No                 |
| <b>4. Conclusion</b>   |    |  |                    |
| No real likelihood of significant effects on the environment   | √  |  | EIAR Not Required. |

|   |     |     |
|---|-----|-----|
| Real likelihood of significant effects on the environment.  | N/A | N/A |
| <b>D. Main Reasons &amp; Considerations</b>   |     |     |
| <p>The overall nature, scale, type, characteristics, and location of the proposed development means that it would not be likely to have significant effects on the environment.</p> |     |     |

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix 2 - Form 2 - EIA Preliminary Examination

|  |   |                              |
|--|---|------------------------------|
| <b>An Bord Pleanála Case Reference</b>   | <b>ABP-315314-22</b>  |                              |
| <b>Proposed Development Summary</b>  | <b>Demolition of all existing buildings on site and the construction of a mixed-use retail, commercial and residential development. The residential development component of this proposed development contains 60 apartments together with associated works and services on a site of 0.45ha</b>   |                              |
| <b>Development Address</b>   | <b>Bright Ford Motors, Herberton Road, Dublin 12, D12 HT99.</b>   |                              |
| <p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> |   |                              |
|  | <b>Examination</b>  | <b>Yes/No/<br/>Uncertain</b> |
| <p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions, or pollutants?</p>                                  | <p>It is consistent with the nature of development deemed to be permissible at this brownfield site under the current Development Plan which seeks to promote in a co-ordinated manner mixed use compact more efficient at higher density redevelopments on 'Z10' zoned lands.</p> <p>This mixed-use development would produce standard expected waste, emissions/pollutants that correlate with a mixed-use retail and residential development of this nature and scale that can be dealt with during demolition, construction, and operational stages by standard as well as best practice measures and controls.</p>   | <p>No.</p> <p>No.</p>        |
| <p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>   | <p>This brownfield site forms part of a larger parcel of land zoned 'Z10' that are deemed to have redevelopment potential for coordinated mixed use more compact development in place of commercial, warehouse and the like existing development that are not deemed to be compatible with emerging more sustainable urban communities at this location nor makes best use of well-connected serviced inner lands. The size and nature of development is consistent with the land use zoning objective and vision for the quantum of development considered to be appropriate at this location where it has been demonstrated no adverse amenity or other undue impacts would arise from it on its surrounding context.</p> | <p>No.</p>                   |

|  |  |                       |
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| Are there significant cumulative considerations having regard to other existing and/or permitted projects?   | The proposed development would together with other redevelopments on serviced with capacity 'Z10' zoned land on its vicinity give rise to cumulative impacts on its setting, however, the cumulative impacts would accord with that envisaged and planned for with the redevelopment of these lands under the current Development Plan. Further there are no existing permitted projects on the parcel 'Z10' zoned land the site forms part of. It is therefore not envisaged that the proposed development would give rise to significant cumulative considerations having regard to other existing and/or permitted projects.  | No.                   |
| <p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p> | <p>Though this appeal site lies 80m to the south of Proposed Natural Heritage Area: Grand Canal (Site Code: 002104) it is not located on, in or adjoining any ecologically sensitive site nor is there any pathways between it and the nearest ecologically sensitive site (Note: South Dublin Bay SAC (Site Code: 000210) which is situated c5.5km to the east as the bird would fly).</p> <p>The proposed development relates to a brownfield site within a serviced inner city urban landscape with significant development between it and the nearest environmentally sensitive area (South Dublin Bay SAC). With no pathway connecting it to this area and given the significant distance between the two, the serviced nature and heavily developed nature of the urban landscape that characterises the landscape in between there is no likelihood that the proposed development would have the potential to significantly affect South Dublin Bay SAC or any other environmentally sensitive area in the wider geographical area.</p> <p>Were it to be considered that there is latent contamination still present from the previous use of the site as a petrol station the lateral separation distance is such that any potential release of such contamination from the site during demolition and construction works would be diluted significantly before South Dublin Bay SAC.</p> <p>Moreover, given the nature of this type of contaminant, the topography, the geology and other locational factors together with the fact that decommission of the main structures and infrastructures related to this use would appear to have been removed in circa 2007 the release of such contaminants from the confines of the site boundaries would be highly likely diluted to an imperceptible level before they would reach the Grand Canal pNHA to the north of the site and would be unlikely to give rise to any significant adverse environmental impact on it.</p> | <p>No.</p> <p>No.</p> |

| Conclusion   |  |   |
|--|--|---|
| <p>There is no real likelihood of significant effects on the environment.</p> <p><u>I concurred with this statement.</u><br/>Based on best scientific data, locational factors, the nature of development sought, the history of the site including when regard is had to its past uses which includes previous use of the lands as a petrol service station, the lateral separation distance between the site and the nearest sensitive receptor as well as the serviced highly urbanised development in between, there is no real likelihood of significant effects on the environment should permission be granted for the proposed development either as originally sought or as revised which is the case with the proposed development that is before the Board for its determination.</p> | <p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>NO.</p> | <p>There is a real likelihood of significant effects on the environment.</p> <p>NO.</p> |

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

DP/ADP: \_\_\_\_\_

Date: \_\_\_\_\_

(only where Schedule 7A information or EIAR required).