



An
Bord
Pleanála

Inspector's Report ABP-315421-22

Development	Construction of extension, 4 storey building mixed use development with 3 apartments with all associated site works
Location	Mespil Court, Mespil Road & Burlington Road, Dublin 4, D04 E516
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	4997/22
Applicant(s)	Esprit Investments Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Frank Buckley
Observer(s)	Ger Sheridan
Date of Site Inspection	27 th May 2024
Inspector	Joe Bonner

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1.0 Site Location and Description

- 1.1. The site of the proposed development is located on the southern side of Mespil Road, immediately south of the Grand Canal and mid-way between Baggot Street Bridge to the east and Leeson Street Bridge to the west. The site is T-shaped with 9.3m of frontage onto Mespil Road. The site extends back in a south eastern direction for between 60m and 63m before widening out at the rear to a rectangular section where the existing 5-storey red brick office building is located, along with surface level parking spaces.
- 1.2. Pedestrian access is available direct from Mespil Road via a code controlled gate, while vehicular access is available from Burlington Road to the southeast through a residential development at Burleigh Court and Burleigh Mews consisting of a mix of two storey houses and 5 storey apartments. The vehicular access route also provides access to the rear of the terrace to the west of the site. An uncontrolled pedestrian access route is also available along the immediate western boundary of the site linking Mespil Road to Burleigh Court and Burlington Road, via the side of No 39 Mespil Road.
- 1.3. Commercial buildings are located either side of the Mespil Road frontage with a modern 6 storey office block located to the northeast, with a building line c13.8 back from the roadside edge, while the terrace of 15 three-storey buildings to the southwest, which are protected structures, are set back 26.5m from the roadside edge. While the protected structures were originally in residential use, the nearest properties to the site are currently in commercial use.

2.0 Proposed Development

- 2.1. The proposed development is described in detail in the public notices but can be summarised as permission for a 4-storey mixed use building extension on a site of c.0.22 ha comprising:
 - A 2-storey, raised bridge, office use building extension, adjoining the 2nd and 3rd floors of the existing Mespil Court office building on its northwestern elevation; plant room at 1st floor and office core extending down to ground floor level (total GFA c. 721 sqm).

- A 4-storey, over basement, mixed use building comprising: 1 no. cafe at ground floor and basement, with ancillary storage and staff welfare facilities at basement level (total GFA c.202 sqm) and associated external northern terrace at ground floor level;
- 3 no. 2-bedroom residential apartment units at 1st, 2nd and 3rd floors, each with associated balconies on the northern and southern facades, ancillary residential remote storage facilities at ground floor level and residential roof garden at 1st floor level.
- All ancillary and associated site development, infrastructural, landscaping, site boundary and signage works, including: Basement plant room; Ground floor bicycle store (18no. spaces) and separate bin store; 4no. visitor bicycle spaces in front curtilage; New plant on roof of existing Mespil Court office building and at 1st floor residential roof garden level of proposed new building extension; Green sedum roof (c.280 sqm) over office bridge extension; Signage zones to northern and eastern ground floor elevations of cafe unit (c.12 sqm total), and totem sign (c.3 sqm) associated with office and residential uses within front curtilage adjacent to Mespil Road site boundary; Removal of existing boundary wall and railing fronting Mespil Road; and, insertion of new pedestrian access control gate to the eastern boundary pathway, south of the proposed cafe entrance.

2.2. Along with the standard drawings and information, the application included the following reports:

- Planning Report
- Tree Assessment
- Water Services and Flood Risk Assessment
- Construction & Demolition Waste Management Plan
- Preliminary Construction & Environmental Management Plan
- Traffic and Transport Assessment and Mobility Management Plan
- Architectural Design Report
- Appropriate Assessment Screening Report
- Protected Species (Bats and Birds) Assessment

- Architectural and Archaeological Heritage Report
- Basis of Design for Mechanical and Electrical Services Installations
- Part L Compliance Report for Mespil Court Extension – Domestic
- Part L Compliance Report for Mespil Court Extension – Non Domestic
- Landscape Design Rational
- Landscape and Visual Impact Assessment
- Daylight and Sunlight Assessment Report
- Verified Views and CGI's

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 30th of November 2022, Dublin City Council (DCC) decided to grant permission subject to the attachment of 15 No. conditions, including:

- No 4 – Details of external finishes to be agreed.
- No 5 – Permanent fritted glass to office and 1.5m high perforated metal screens to be installed on roof garden to be installed to protect adjoining amenities.
- No 6 – Submit details of café operator, fumes and odours controls and signage.
- No 8 – Revised bike parking to be provided separately for residents (6 no.) and offices (11 no.) and visitors (4 no.), which may require the loss of a car parking space. Two existing car parking spaces will be allocated to the residential element, and will be fitted with electrical charging points. Pedestrian and cyclist access from Mespil Road to be maintained.
- No 10 – Adequate waste storage to be provided .
- No 11 – Landscaping.
- No 12 – Pre commencement Archaeological Impact Assessment including testing, monitoring and excavations if necessary as well as preservation by record or in situ.

3.2. Planning Authority Reports

3.2.1. Planning Report

- The Planning Officer's report is the basis for the Planning Authority's decision to grant permission. It addressed the following matters:
- It notes the policy provisions and development standards of the now superseded 2016-2022 Development Plan, as well as Section 28 Guidelines.
- Notes concerns expressed at a pre application meeting including suitability of the site due to its function as open space, the need to respect established building line and height of the adjacent terrace, compensation for loss of trees and overlooking and overshadowing to be addressed.
- Height and scale have been reduced to seek to overcome a previous refusal.
- Office use outside the canal ring and residential uses are open for consideration on Z6 zoned lands (in the 2016-2022 Development Plan).
- Restaurant uses (which include cafes) are permissible on Z6 zoned lands.
- The buildings either side of the site are in office use and the proposed residential use would be subsidiary to the existing and proposed employment-generating uses on the site.
- There are not an excessive concentration of café uses at this location.
- The plot ratio and site coverage do not exceed development plan limits and the height has been reduced to 15m, which is below the 16m limit for the outer city area.
- An acceptable level of public and semi-private open space would be provided.
- The apartments would be compliant with the requirements of the apartment guidelines.
- The site can be characterised as an unfilled site in an area of varied cityscape. The residential block respects building lines, parapet height, solid to void ratio and materiality of the adjoining Georgian terrace while providing for a building of contemporary design.

- Where the ground floor projects forward of the established building line, it would not appear unduly obtrusive or incongruous in the streetscape and the proposed material finishes reflect those of the adjoining Georgian terrace.
- The proposal is acceptable from a built heritage perspective. Any potential subsurface archaeological remains can be addressed by way of condition as recommended by the city archaeologists.
- While the loss of two mature Sycamore trees is regrettable, they do not form part of a formal tree line along the Grand Canal corridor, do not host confirmed bat roosts or nesting birds and their retention would militate against a significant quantum of development on this service and accessible infill site. Mitigation has been proposed in the form of additional landscaping and the removal of the trees can be justified in the interest of facilitating compact urban growth.
- The Landscape and Visual Impact Assessment demonstrates that the proposed development would sit comfortably in the streetscape and would not detract from the visual amenity of the area.
- The reduction in scale and height addressed concerns raised in the previous application regarding potential overbearing impact on adjoining properties.
- The adjoining office uses would not experience such an adverse reduction in daylight levels to warrant refusing permission.
- Potential overlooking impacts arise in respect of the proposed glazed office extension which interfaces with commercial/ office uses on both sides and the proposed fritted glazing would mitigate any perceived intrusion on privacy of adjoining properties. Proposed perforated metal guarding screens to the sides of the first floor terrace should be increased in height to 1.5 metres to minimise mutual overlooking impacts with adjoining properties.
- Parking can be addressed by way of condition.
- The proposed totem signage at the front of the site at 2m in height is smaller than the 3m previously refused under P.A. Reg. Ref. 4307/16 and would not seriously injure the visual amenities of the Grand Canal Conservation Area.

- The proposed café signage on the fascia is of an appropriate scale and the exact detail can be addressed by way of condition.
- The AA Screening Report concludes that significant effects on the conservation objectives of any Natura 2000 sites, are not likely as a result of the proposed development and that stage two appropriate assessment is not required. It notes that a pathway to the nearest European sites that are located 2.36km to the east would be via the existing combined sewer system that discharges to the Ringsend wastewater treatment plant.
- The proposed development is a sub-threshold class of development for EIA purposes, and having regard to the documents submitted with the application, the need for EIA can be screened out.

3.2.2. Other Technical Reports

Drainage Division – No objection subject to standard conditions including separate foul and surface water systems, SUDS and surface water attenuation.

Archaeology Section – No objection subject to conditions. The report refers to archaeological sites and protected structures and reviewed the Architectural and Architectural Impact Assessment. The site may contain remains of an old hat factory or earlier barracks.

Transport Planning – No objection subject to conditions. It states that the previous refusal (3878/20) did not, and the submission on the current application do not relate to traffic issues. It should be clarified how cyclists will be able to access the existing offices at Mespil Court from Mespil Road, while the proposed extension may alter fire tender access. While the application indicates that waste will be collected on a weekly basis, the area of bin storage proposed is insufficient and needs to be addressed in an operational waste management plan, while details of deliveries and servicing has not been provided.

The existing offices have 23 parking spaces. The site is located in Area 2 of Map J of the Development Plan and the maximum permissible number of parking spaces would be 5. The plans show 20 spaces while there are 31 on the site and 2 spaces should be allocated to the residential element.

The number of bicycle parking spaces is acceptable, but separate parking should be provided for each of the café, residential and office uses.

3.3. Prescribed Bodies

- None

3.4. Third Party Observations

One observation was received from Frank Buckley (the applicant) with an address at 4 Burleigh Mews, which is one of the houses located to the southeast of the site accessed from Burlington Road. The issues raised in the observation were also addressed in the grounds of appeal and I refer the Board to section 6.1 below.

4.0 Planning History

Application Site

- **P.A. Reg. Ref. 3878/20:** Permission refused on the 9th of February 2021 for the construction of a 6-storey over basement commercial office building (c. 2,583.24) and 1no. ground floor cafe. The provision of a new pedestrian street along the eastern boundary serving both cafe and office access, 26no. bicycle parking spaces and bin stores at ground floor level and ancillary storage at basement level.

The reasons for refusal were:

1. Having regard to the prominent and sensitive location of the subject site, adjoining Protected Structures and its setting within the Grand Canal Conservation Area and having regard to Policy CHC4 of the Dublin City Development Plan 2016-2022, which seeks to protect the special interest and character of all Dublin's Conservation Areas, the proposed development will, by reason of proximity and visual intrusion, have a significant and detrimental impact on the setting of the Protected Structures and will constitute a visually obtrusive and incongruous form of development. The proposal given its height, scale and massing towering above the established historic terrace, would create an undesirable precedent for similar type development, and would represent an overdevelopment of the subject site that has not had appropriate regard to section 14.7 of the Dublin City Development Plan on Transitional sites. The proposal as such would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

2. The proposed development of a 6 storey building is considered to seriously impact on the amenity of the adjoining sites given the restricted nature of the site and the proposal to locate the development on or in such close proximity to its shared boundaries, resulting in a development which is 'wedged in' with resultant overshadowing and overbearing impacts. The proposed development is therefore considered to be seriously injurious to the amenity of the neighbouring properties and is therefore contrary to the proper planning and sustainable development of the area.

- **P.A. Reg. Ref. 3189/20:** Permission granted on the 18th of November 2020 for existing bin storage area (15 sqm) to the west of Mespil Court and permission refused for retention of existing 9 no. car parking spaces to the south-west. The parking spaces have been removed and the area is kerbed and grassed over.
- **P.A. Reg. Ref. 3703/16:** Permission granted on the 27th of March 2017 for relocation of the existing railings and gate at pedestrian entrance on Mespil Road. Permission refused for the erection of 1no. 3m high totem sign and 3no. 6m high flagpoles at same location as the nature and impact would be seriously injurious to the character and amenities of this sensitive area, which is a designated Conservation Area and would conflict with policies and objectives of the development plan for conservation areas.
- **P.A. Reg. Ref. 2465/16:** Permission granted on the 16th of June 2016 for a free standing ESB substation and Switch room to the south east of the existing office building. The development is built.
- **P.A. Reg. Ref. 2396/16:** Permission granted on the 25th of May 2016 for a single-storey reception area extension (approx. 40 sq.m) to the front (North-West) on to Mespil Road. The extension is built.
- **P.A. Reg. Ref. 1609/99:** Permission refused on 20th of June 1999 for 4 additional car parking spaces as they would be contrary to the Dublin Transport Initiative which seeks no growth in private non-residential off-street parking,

4.1.1. No 39 Mespil Road (property of observers on appeal)

- **PL29S.217777 (P.A. Reg. Ref 1897/06)** Permission refused by the board on the 25th of October 2006 to demolish extension, construct four storey office with

basement plant room and other ancillary site works. The inspector's report noted that the site was in office use since at least 1979.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022 (superceded)

- 5.1.1. During the period when the application was under consideration by the Planning Authority and the decision to grant permission was issued on the 30th of November 2022, the relevant Development Plan was the Dublin City Development Plan 2016-2022, which has now been superceded by the Dublin City Development Plan 2022-2028.
- 5.1.2. In the 2016-2022 Development Plan, the site was zoned 'Z6' in Map E, the objective of which was 'To provide for the creation and protection of enterprise and facilitate opportunities for employment creation'. 'Office' use outside of the canal ring and 'Residential' were both 'Open for Consideration Uses', while 'Restaurant' was a 'Permissible Use'. The offices to the northeast were also zoned Z6. The lands to the south of the site were zoned Z1 Sustainable Residential Neighbourhoods.
- 5.1.3. The terrace of protected structures to the west, were built as houses, but are now mostly in use as offices and were zoned Z8 'Georgian Conservation Areas', where it was the objective 'to protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective'.

5.2. Dublin City Development Plan 2022-2028

- 5.2.1. The Dublin City Development Plan 2022-2028 came into effect on the 14th of December 2022. The site is zoned 'Z6 – Employment / Enterprise', the objective for which remains, like in the 2016-2022 Plan 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'.
- 5.2.2. 'Permissible Uses' in Z6 zoned areas include 'café/tearoom', 'office' and 'restaurant'. Residential is neither 'Permissible' nor 'Open for Consideration' in the new development plan, which is a change from the previous development plan. 'Embassy residential' is open for consideration, but was not the subject of the application
- 5.2.3. Section 14.3 'Permissible, Non-Permissible Uses and Unzoned Lands' states that:

- There will be a presumption against uses not listed under the permissible or open for consideration categories in zones Z1, Z2, Z6, Z8, Z9, Z11, Z12 and Z15.

5.2.4. The introduction to Section 14 'Land Use Zoning' provides an explanation of the land-use categories and the zoning objectives which apply'. It continues by stating that 'A comprehensive review of the city's zoned land has been undertaken and a number of changes have been made to the land-use zoning objectives, zoned areas, and the nature and extent of appropriate uses. This review built on the comprehensive study of the city's Z6/Z7 zoned lands that was undertaken in accordance with Objective CEE04 of the 2016 -2022 Development Plan in order to identify lands with the potential to accommodate more intense land-uses within the existing built fabric of the city over the short, medium and long term'.

5.2.5. Some of the key changes in the development plan include:

- Development principles applying to Z6 (Employment/Enterprise) and Z7 (Employment (Heavy)) lands have been revised to take account of changes in the planning context since 2016 and the comprehensive review of the low intensity industrial areas of the city. There is an enhanced focus on promoting employment and providing a wide range of local services on the city's remaining Z6 zoned lands. The ongoing development and consolidation of Z6 and Z7 lands for these purposes will be encouraged.

5.2.6. Section 6.2 'Achievements' under the heading of 'Regeneration and Vacancy' states that 'A strategic Study of all Z6 and Z7 lands was undertaken over the last plan period, followed by a number of variations to the current Dublin City Development Plan to facilitate the repurposing and redevelopment of these strategically located lands for more intensive and appropriate mixed use development'.

5.2.7. The following description of the Z6 zoning is provided:

The development plan has identified key Strategic Development Areas (see Chapter 6: City Economy and Enterprise) to support investment, job creation, and overall economic growth within the city.

In addition, it is considered that the remaining Z6 lands constitute an important land bank for employment use in the city, which is strategically important to protect. The progressive consolidation and development of these lands will be supported. The primary objective for this zone is to facilitate long-term economic development in the

city. It is important that these remaining Z6 zoned lands provide for intensive employment and accommodate a wide range of local services.

The uses in these areas will create dynamic and sustainable employment and include innovation, creativity, research and development, science and technology, social enterprise, creative industry and the development of emerging industries such as green/clean technologies and the marine sector. These uses will be accommodated in primarily office based industry and business technology parks developed to a high environmental standard and incorporating a range of amenities, including childcare facilities, public open space and enhanced public realm, green networks and leisure facilities.

A range of other uses including local support businesses, are open for consideration on lands zoned Z6 but are seen as subsidiary to their primary use as employment zones. The incorporation of other uses, such as recreation/leisure and retail uses, will be at an appropriate ratio where they are subsidiary to the main employment generating uses and shall not conflict with the primary land-use zoning objective, nor with the vitality and viability of nearby Urban Villages.

Proposals for development of these lands should create a high quality physical environment; coherent urban structure; provide the opportunity to develop sustainable employment use; and, contribute to developing the strategic green network by providing green infrastructure, landscape protection, public open space and sustainable energy solutions.

The chapters detailing the policies and objectives for economic development and standards, respectively (particularly Chapters 6: City Economy and Enterprise, and Chapter 15: Development Standards), should be consulted to inform any proposed development.

5.2.8. The front part of the site facing onto Mespil Road, running from the front building line of the terraces of houses to the immediate west towards the canal, is designated as in a Conservation Area. Section 15.15.2.2 'Conservation Areas' provides that all planning applications for development in conservation areas shall:

- Respect the existing setting and character of the surrounding area.
- Protect the amenities of the surrounding properties and spaces.
- Positively contribute to the existing streetscape.

5.2.9. Policy BHA9 provides that development within a 'Conservation Area' must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

5.2.10. As the Z6 zoned site lies adjacent to a terrace of protected structures zoned Z8 Georgian Conservation Zone', Section 14.6 'Transitional Zone Areas' is relevant and states:

- The land-use zoning objectives and control standards show the boundaries between zones. While zoning objectives and development management standards indicate the different uses permitted in each zone, it is important to avoid abrupt transitions in scale and land-use between zones. In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals, and to landscaping and screening proposals, in order to protect the amenities of residential properties (see also Appendix 3: Achieving Sustainable Compact Growth Policy for Density and Building Height in the City, Chapter 4: Shape and Structure of the City, and Chapter 15: Development Standards for guiding principles regarding criteria such as height, density, urban design).
- SC14 and SC15 of Section 4.5.4 contain policies relating to 'Building Height Strategy', and 'Building Height Uses', which should be consistent with SPPR's 1 to 4 of the 'Building Height Guidelines, while SC16 'Building Height Locations' recognising the potential and need for increased height in appropriate locations, which are identified in Appendix 3 'Achieving Sustainable Compact Growth Policy for Density and Building Height in the City'.

5.2.11. The following policies are considered relevant to the appeal:

- QHSN6 – 'Urban Consolidation' seeks 'to promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development'

- QHSN9 – ‘Active Land Management’ seeks ‘to promote residential development addressing any shortfall in housing provision through active land management, which will include...a co-ordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and underutilised sites
- CEE21 – ‘Supply of Commercial Space and Redevelopment of Office Stock’.
- CCUV30 – ‘Cafés / Restaurants’ seeks ‘to promote and facilitate the provision of cafés / restaurants in the city and support their role in making the city more attractive for residents, workers, and visitors and in creating employment’.

5.3. National Policy and Guidelines

- 5.3.1. Having considered of the nature and scale of the proposed development, the receiving environment and site context, as well as the documentation on file, I am satisfied that the directly relevant Section 28 Ministerial Guidelines, are:
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities (2023) (Apartment Guidelines).
 - Urban Development and Building Heights, Guidelines for Planning Authorities, December (2018) (Building Height Guidelines).
 - Architectural Heritage Protection Guidelines (2011)
- 5.3.2. Where relevant, sections from the above Guidelines are included in the Assessment Section of this report.

5.4. Natural Heritage Designations

- 5.4.1. The nearest Natura 2000 sites are South Dublin Bay SAC (Site Code:000210) and South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) which are c2.3km east of the site.

5.5. EIA Screening

- 5.5.1. See completed Form 1 and Form 2 in Appendix 1.
- 5.5.1. Having regard to the limited nature and scale of the proposed extension to an existing commercial development in a serviced urban area, which is well below the thresholds set out in Part 2 (10) of Schedule 5 to the Planning and Development Regulations 2001 (as amended) dealing with urban developments (500 dwelling

units, 10ha site area) where the proposal is for 3 residential units, a 202sqm café and 721 sqm of offices at second and third floor levels, and to the absence of connectivity to any sensitive locations, I have concluded at preliminary examination stage that there is no real likelihood of significant effects on the environment arising from the proposed development having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended).

- 5.5.2. I conclude that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. One third party appeal was received from Mr Frank Buckley, who lives c50m south of the area to be developed.

- The construction of a large building will fundamentally and negatively alter the character of the site and area and would remove an important strip of land between commercial use to the east and a Georgian terrace to the west.

- The houses on the road are protected structures and should not be encroached upon by a development of this scale and character.
- Permission was previously refused under P.A. Reg. Ref. 3878/20 for 2 reasons including 1) proximity to protected structures and impact on their setting, visual intrusion and overdevelopment; 2) seriously impact amenity of adjoining sites due to restricted nature of site, wedged in between buildings with overshadowing and overbearing nature.
- While the scale of development has been reduced in this application, the site is not suitable, is a transition space and deserves to be protected.
- Despite expressing reservations at pre-application stage, the planning authority accepted the development with no clear reason given.
- The planning authority has not established that the principle of the development is acceptable in the context of the previous decision and assessment.

- The planning officer's report does not address if the site is an actual site, as it is open space, and does not address its evolution in the context of the architectural heritage assessment.
- However, if the proposed development was contrary to CHC4 of the 2016 to 2022 development plan, is the current proposal acceptable, as it removes a buffer that defines the old and new buildings.
- The proposed development is over development and non-compliant with section 14.7 of the development plan referring to transition sites.
- Two Sycamore and several smaller trees will be removed. This cannot be mitigated and the loss will be apparent from the canal.
- The scale of the development is unacceptable with regard to CHC4, the previous refusal and the sites location in a conservation area.
- The application is deficient and it is not clear if it was referred to An Taisce or the Georgian society.
- The Café use is inappropriate, there are plenty in the area and it will lead to an oversaturation of commercial development further tilting the balance of the area from residential to commercial.

6.2. Applicant Response

- 6.2.1. The applicant responded to the grounds of appeal with an introduction and a number of headings which are set out below.
- 6.2.2. They consider that any no new issues were raised and that the impacts of the proposed development were comprehensively considered in the application via numerous specialist reports. No significant planning, environmental or heritage impacts are predicted.
- 6.2.3. The application took account of the previous refusal and this significantly altered proposal took cognisance of the adjacent protected terrace.
- 6.2.4. Cites extracts from the planning officer's report that sees the proposed development in a positive light regarding design, finished, built heritage, AA and EIA screening.
- 6.2.5. None of the conditions require alterations to the design or use.

6.2.6. Development site status

- The appellant's reference to transitional space is contested and the development plan does not prohibit development of such areas, but rather seeks to avoid abrupt transition in space and use in such areas.
- They note the blank elevation of the adjacent office building to the east, that appears to anticipate the infill development of this site, while the residential element will provide much needed housing.
- The height of the building has been reduced from the previously proposed 6 storeys to 4 storey, while the mass has been broken down and open space added between the residential and office elements of the proposed extension.
- While the current use of the adjacent terrace is commercial, the buildings could revert to residential, and the residential element of the proposed development manages the adaptability of this neighbouring relationship well.
- The planner's report found the development aligns with policies of the 2016-2022 development plan, which were the equivalent of QHSN6, QHSN9, CE21 and CCUV30 of the 2022-2028 Development Plan.

Residential

- Whilst the current development plan no longer includes residential in the list of uses that are 'permitted in principle' or 'open for consideration', it does allow for what we know to be categorised as 'other use' to be dealt with in accordance with how the proposed development and prevents the broader policies and objectives of the development plan, such as those identified above.
- Furthermore, under section 37(2)(2) the Planning and Development Act 2000, as amended, the board has the discretion to permit development that materially contravenes the development plan, having regard to: the strategic importance of promoting sustainable compact development, in particular at infill and brownfield sites, the broader policies and objectives of the development plan that reflect these strategic policies; and, the general pattern of development in this area being reflected over the next few years at the edge of the inner city centre.

6.2.7. Building Height & Massing

- The planning report submitted with the application addresses the building height which reaches 15.1 metres in height (4 storey), where the building height guidelines identify a general presumption in favour of increased building height to the appropriate locations, and the prevailing building height in this area varies between 3 and 9 storeys. The development does not represent a departure from the prevailing heights and is quite modest at four storeys.
- The architectural landscape drawings and associated reports clearly demonstrate the building extension has been carefully scaled, massed and designed to avoid overdevelopment and ensures protection of neighbouring and visual amenities, while the planning authority noted the plot ratio, height and site coverage are all below the development plan standards for the area and any potential issues can be addressed by way of condition.

The appellant has not provided any substantive evidence to contradict the assessment of the planning authority.

6.2.8. Loss of vegetation

- The landscape drawings, and the planning, Arborist assessment and Architectural and Archaeological Heritage Impact Assessment reports submitted with the application address the loss of existing trees and vegetation, with the latter determining that the loss of trees would have a slight impact on the character of the protected structure and did not form part of the formal treeline on the Grand Canal. The planning authority is satisfied with the proposal and the applicant does not agree with the appellants contention that the loss of the trees cannot be mitigated.

6.2.9. Inappropriate Café use proposed on ground floor

- The planning authority found that there is no excess of cafes at this location, that café is a 'permissible use' on Z6 zoned lands and will provide a useful service and activate the ground floor space as well as providing an attractive landscaped space for public enjoyment.

6.3. **Planning Authority Response**

- A response was received from the planning authority outside of the period provided for in section 129(2)(a) of the Planning and Development Act 2000 (as amended), and shall not be considered a part of this appeal.

6.4. Observations

6.4.1. A third party observation in respect of the grounds of appeal was submitted to the board, on behalf of Ger Sheridan of Sheridan Motor Group of 39 Mespil Road, Dublin 4, which is the end of terrace building immediately adjacent to the west of the narrow part of the application site, where the extension would be built. It addressed the following:

- The observation agrees with the appellant and requests that permission be refused for the proposed development.
- While the site is stated to be 0.22ha, that refers to the overall site incorporating the existing office building and the development area is 9-10m wide and 65-70m long.
- They agree with the appellant that the site is a residual area and should be retained development free to protect the character and integrity of the Conservation Area and adjacent Protected Structures.
- Policy CHC4 of the 2016-2022 Plan has been replaced by Policy BHA9 in the 2022-2028 plan and level of protection for Dublin's Conservation Areas and Protected Structures is generally the same or greater under the new plan.
- While the height of the building has been reduced from the previous proposal, except for the omission of the ground floor cafe pavilion to the front, the footprint is similar and would not have due regard to section 14.6 'Transitional Zonal Areas' of the new development plan (previously section 14.7).
- Agree with the appellant's assertion that the 2nd refusal reason relating to the restricted site area, overshadowing and overbearing impacts continues to apply, while the minutes of the preplanning meeting from the 13th of June 2022 reads as the planning authority being in agreement that this is not a development site. The subsequent planning officer's report did not deal with the question of whether the site is suitable for development.
- Given the previous refusal and the information contained in this application, there is a strong case to be made that the site must be retained free from development to respect the transitional zone areas policy of the development plan.

- The proposed development would obliterate the long established buffers or transition zone and would give rise to a very uncomfortable arrangement, not least for the property owner of No. 39 to the west.
- The planning officer's assessment fails to have regard to the long established relationship between the terrace and lands to the east which have developed through several development cycles and are clearly shown on a number of ordinance survey maps from c1840s and c1900.
- The historic maps show no boundary between the cottages and the current site meaning the application site as effectively part of the curtilage protective structure and this relationship must be respected.
- No meaningful assessment has been given to the setting of the proposed development and the question as to whether the site is suitable for development at all true to its role as a 'buffer' or 'transition' between Mespil Road Terrace and No 40 Mespil Road.
- The development will be overbearing and will have serious impacts in terms of overlooking and overshadowing.
- Failure to refer the application to an Taisce is a fundamental flaw in the application.
- The cycle and pedestrian access to the site is also the route to neighbouring Burleigh Mews, Burleigh Court and Burleigh Gardens Apartments and the replacement route is narrow, hidden, enclosed and uninviting.
- The loss of the trees would be significant.
- The development will cause overlooking at the front and the private garden, rear windows and rear extension of No 39.
- Not satisfied that the sunlight and daylight impact on individual rooms has been carried out for No 39.

6.5. Further Responses

- None

7.0 Assessment

7.1. Introduction

7.1.1. Having reviewed the documents on the file and undertaken a site visit and having regard to the relevant policies and zoning objective pertaining to the subject site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings: -

- Principle of overall development, loss of open space and transitional areas
- Principle of Office and Café Development
- Principle of Residential Development
- Compliance with Apartment Guidelines
- Height
- Prescribed Bodies
- Design
- Right of Way
- Impact on Protected Structure and Conservation Area
- Potential for use proposed apartments as office space
- Right of Way
- Overlooking and Overshadowing
- Loss of Trees

7.2. Principle of overall development, loss of open space and transitional areas

7.2.1. The appellant and observer to the appeal have questioned whether this site is in fact a development site at all, and in their opinion, it is an open space between buildings in a transitional area that should remain free from development. Section 14.6 'Transitional Zone Areas' of the development plan does not at any point state that transitional areas are areas that should remain free from development and if it was the opinion of the planning authority that this site was in fact open space, then it

could have zoned the land as open space in its review of the development plan, which included a comprehensive review of Z6 zoned lands. What the development plan does state is that it is important to avoid abrupt transitions in scale and land-use between zones and that in dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. I am satisfied that the site of the proposed development is, subject to all other considerations suitable for development and is not open space, despite its current landscaped use.

7.3. Principle of Office and Café Development

- 7.3.1. The site is zoned Z6 in the Dublin City Development Plan 2022-2028, the objective for which is to provide for the creation and protection of enterprise and facilitate opportunities for employment creation. Office, café/tearoom and restaurant are all 'Permissible Uses' in Z6. Therefore, subject to all other matters which are addressed below, I am satisfied that the office and café elements of the proposed development would be acceptable at the site.

7.4. Principle of Residential Development

- 7.4.1. At the time that the application was submitted to the planning authority 'Residential' use was 'open for consideration', while in the new development plan that came into effect on the 14th of December 2022, 'Residential' is neither 'Permissible' nor 'Open for Consideration'.
- 7.4.2. Section 5 of the applicant's planning report that is dated 22nd of September 2022, and formed part of the application to the planning authority, refers to pre-planning consultation that was held on the 13th of June 2022 and under the heading of 'Zoning' it states that 'DCC accepted the land use zoning is for employment use. The acceptability of proposed residential use will depend on the timing of the application. DCC notes whilst residential uses would ordinarily be accepted, residential is proposed to be removed from the permissible uses within the next Dublin City Development Plan'. Therefore, I am fully satisfied that the applicant was fully aware, even before they submitted the application to the planning authority, that there was a chance that residential would no longer be an acceptable use on this site, when the application would fall to be decided and the application before the Board must be

assessed in the context of the policies and objectives for the site under the current Dublin City Development Plan 2022-2028.

- 7.4.3. The Dublin City Development Plan 2022-2028 came into effect on the 14th of December 2022, just two weeks after the decision to grant permission was issued by the planning authority and prior to the submission of the appeal. Having been invited to respond to the grounds of appeal, the applicant was also aware that the new development plan has come into effect and that residential was no longer an acceptable use on Z6 zoned lands.
- 7.4.4. In their response to the grounds of the appeal, which I have addressed in section 6.2 above, the applicant stated that ‘under section 37(2)(2) the Planning and Development Act 2000, as amended, the board has the discretion to permit development that materially contravenes the development plan, having regard to: the strategic importance of promoting sustainable compact development, in particular at infill and brownfield sites, the broader policies and objectives of the development plan that reflect these strategic policies; and, the general pattern of development in this area being reflected over the next few years at the edge of the inner city centre’. No further justification was provided by the applicant for the residential element of the development and they did not address the new Z6 planning policy context.
- 7.4.5. Before I address the concept of material contravention, I will examine relevant development plan policy, which I have previously set out in section 5.2 of this report. Section 14.3 ‘Permissible, Non-Permissible Uses and Unzoned Lands’ clearly states there will be a presumption against uses not listed under the permissible or open for consideration categories in zones Z6 and 7 other zones. Therefore, as residential is not listed in either category, there is a clear presumption against permission being granted for residential development on this site and any reasonable person reading the development plan would come to the same conclusion.
- 7.4.6. The introduction to Section 14 of the development plan ‘Land Use Zoning’ provides an explanation of the land-use categories and the zoning objectives which apply’ and continues by providing a detailed overview of the considerations that went into the zoning of Z6 lands in the current development plan and the changes that occurred since the 2016-2022 development plan.
- 7.4.7. Section 14 states that a comprehensive review of the city’s zoned land had been undertaken and a number of changes have been made to the land-use zoning

objectives, zoned areas, and the nature and extent of appropriate uses. It noted that development principles applying to Z6 (Employment/Enterprise) have been revised to take account of changes in the planning context since 2016 and that there is an enhanced focus on promoting employment and providing a wide range of local services on the city's remaining Z6 zoned lands, which would include the application site. It also states that the ongoing development and consolidation of Z6 and Z7 lands for Employment/Enterprise purposes will be encouraged.

- 7.4.8. The description of Z6 zoned land in the plan also states that all land not designated as Strategic Development Areas (SDA), which would apply to the application site, constitute an important land bank for employment use in the city, which is strategically important to protect and that the progressive consolidation and development of these lands will be supported. It continues by stating that the primary objective for this zone is to facilitate long-term economic development in the city and that it is important that these remaining Z6 zoned lands provide for intensive employment and accommodate a wide range of local services. I also note that while the description of Z6 lands references what other uses may be appropriate on Z6 zoned areas, no reference is made to residential use, being one such use.
- 7.4.9. The decision to grant permission for the proposed development was issued on the 30th of November 2022, when residential use was still 'open for consideration', however, on the 14th of December 2022 the new development plan came into effect and residential was no longer either 'Permissible' or 'Open for Consideration'.
- 7.4.10. I note that the planning authority failed to submit a response to the grounds of the appeal within the required time limit, so it is not known if they made any comment in respect of the proposed residential element of the development in the context of the new development plan.
- 7.4.11. While being aware from the pre-planning stage of the risk that the residential element of the development may not be compatible with the land use zoning, the applicants only argument in support of the three apartments is that the board has discretion under Section 37(2)(a) of the Planning and Development Act 2000 (as amended), which states that 'the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates'.

7.4.12. I am satisfied that the proposed residential element of the development would constitute a material contravention of the Z6 land use zoning. I also consider that it is important that a development plan is allowed time after its adoption to be implemented as adopted. Taking into account that this appeal was lodged only two weeks after the new development plan came into effect, which would have been after it was officially adopted by the elected members, and to the rationale and reasons set out in the plan for retaining the Z6 zoning on some lands, for rezoned some Z6 lands, that 'Residential' was removed as a use category on the retained Z6 lands and that section 14.3 clearly states that there is a presumption against granting permission for uses not listed as 'permissible or open for consideration in Z6 zoned lands, I am satisfied that it would not be appropriate to grant permission for the residential element of the development and I am further satisfied that permission be refused for this element of the development.

7.5. Compliance with Apartment Guidelines

7.5.1. Notwithstanding that the principle of residential development is not acceptable at this location and that I consider that permission should not be granted for the three apartments as it would constitute a material contravention of the development plan, I have assessed the apartments against the requirements of the Apartment Guidelines, for compliance therewith, in order to assist the board in its considerations of the application.

7.5.2. The updated Apartment Guidelines 2023, which were published after the decision of the planning authority was issued, did not affect floor area requirements for apartments. The Housing Quality Assessment (HQA), submitted with the application, provides details of unit sizes, aspect, aggregate living floor areas, width of main living space, floor to ceiling heights, bedroom sizes and widths, storage areas, private and communal open space.

7.5.3. Paragraph 1.18 of the guidelines states that the Board are required to apply any specific planning policy requirements (SPPRs) set out in the guidelines.

SPPR's 1 and 2

7.5.4. Specific Planning Policy Requirement 1 (SPPR 1) stipulates that housing developments may include up to 50% one-bedroom or studio type apartments (with no more than 20-25% of the total proposed development as studios). Following from SPPR 1, and based on the number of units proposed, SPPR 2 is also relevant, and

provides that 'for all building refurbishment schemes on sites of any size, or urban infill schemes on sites of up to 0.25ha: Where up to 9 residential units are proposed, notwithstanding SPPR 1, there shall be no restriction on dwelling mix,

- 7.5.5. The development would have 3 no 2 bed apartments and SPPR 2 applies as the site is 0.219ha. I am satisfied that the proposed development is consistent with the unit mix requirements of SPPR1 and SPPR 2 of the apartment guidelines.

SPPR 3

- 7.5.6. With proposed floor areas of 91.5sqm, all 3 apartments would exceed the minimum floor space requirements set out in SPPR 3 of the apartment guidelines, which for a 2-bedroom 4 person apartment is 73 sq.m, and I am satisfied that the requirements of SPPR 3 would be complied with.

Bedroom sizes

- 7.5.7. The Apartments would have bedrooms measuring in excess or equal to the minimum bedroom size requirements and would satisfy the individual and aggregate requirement for 2-bedroom four person apartments.

SPPR 4

- 7.5.8. SPPR 4 states 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. All 3 apartments would be dual aspect, meaning that the proposed development would be compliant with SPPR4.

Floor to Ceiling Heights

- 7.5.9. The apartments would have ceiling heights of 2.6m, which exceeds the suggested minimum height of 2.4m.

SPPR 6

- 7.5.10. SPPR 6 provides that apartment schemes may have a maximum of 12 apartments per floor per core. Each floor would have only one apartment and I am satisfied that the development would be compliant with SPPR6.

Private Open Space

- 7.5.11. Each of the apartments would be provided with the required quantity of private open space in the form of balconies of 7sqm at the front looking north onto Mespil Road

and a second balcony of 4.3sqm at the southeastern corner at bedroom No. 1, which means that the open space provision at 11.4sqm would be in excess of the 7sqm requirement set out in Appendix 1 to the Apartment Guidelines.

Communal Open Space

- 7.5.12. It is proposed to provide a first floor roof terrace/garden as a form of communal open space with an area of 78sqm, which is significantly in excess of the required area of 21sqm.

Internal storage

- 7.5.13. Each apartment would be provided with 6sqm of internal storage, which is 1sqm in excess of the minimum requirement, while each apartment would also be provided with an additional 6.5sqm of storage in a central storage area at ground floor level.

Conclusion on Apartment Guidelines

- 7.5.14. I am satisfied that all three apartments would comply with the requirements of the Sustainable Urban Housing: Design Standards for New Apartments - Guidelines - December 2022 (2023).

7.6. Height

- 7.6.1. The site currently contains a 5-storey flat roofed office building set back c73m from Mespil Road with a height of 20.25m. The existing office building to the immediate east is 6-storeys in height above basement level, with a parapet height of 23.89m above ground level, while the three storey terrace of houses/offices to the west have a ridge height of 11.72m above ground level.
- 7.6.2. I note that the height of the proposed development is a much scaled down proposal relative to the development that was refused permission by the planning authority under P.A. Reg. Ref. 3878/20, which had a proposed maximum height along the front, facing Mespil Road, of 22.72m above ground level, with the top of the plant room sitting 24.9m above ground level, meaning that it would have been taller than the adjacent office building and taller than the adjacent terrace of protected structures by 10.76m at the front and 12.94m at the rear. The planning authority considered that the proposed building would create an unacceptable transition between the site and the adjacent terrace of protected structures due to the difference in height between the buildings.

- 7.6.3. The development under consideration in this application would be 4-storeys in height at the front and back although the rear section would be two storeys cantilevered above the existing car park. The front section of the current proposal, which would accommodate the apartments, would have a height of 14.32m at the front, which is 2.55m higher than the ridge of the adjacent terrace, while the highest point of the gently sloping roof would be 3.37m higher than the terrace at a distance 10.15m back from the front proposed building line. The flat roof of the office element at the rear would be lower than the front section and would not be visible from Mespil Road and would have a maximum height of 14.32m.
- 7.6.4. The height strategy in Appendix 3 to the Development Plan indicates that Plot Ratio and Site Coverage are two determinants as to whether a building is suitable for a site, and in that regard, the site coverage would be 34% and the plot ratio 1.85, both of which include the floor area of the existing office building and the proposed development in the calculations. Table 2 of Appendix 3 to the Development Plan provides that Plot Ratio in Conservation areas would be 1.5-2.0 and in Outer Employment Areas' it would be 1.0-2.5. The Site Coverage in the areas would range from 45-60%. I am satisfied that compliance with these criteria indicated that the proposed development would not represent overdevelopment of the site.
- 7.6.5. I am also satisfied that the proposed 4 storey building at this location does not constitute an unacceptable form of building, would not be excessive in terms of its height relative to the adjacent buildings and would be acceptable taking into consideration that Appendix 3 to the development plan states that 'outside of the canal ring, in the suburban areas of the city, in accordance with the guidelines, heights of 3 to 4 storeys will be promoted as the minimum'. In reaching my conclusion, I have also considered the characteristics of the site, the prevailing pattern of development in the area and to the height of the adjacent terrace of protected structures.

7.7. Prescribed Bodies

- 7.7.1. Both the appellant and the observer on the appeal expressed concern that the application had not been referred to certain prescribed bodies.
- 7.7.2. The Board circulated the appeal to 1) An Comhairle Ealaíon; 2) An Taisce; 3) Fáilte Ireland; 4) Minister for Culture, Heritage and the Gaeltacht and 5) The Heritage Council on the basis that the board was of the opinion that the development may

affect the Grand Canal Conservation Area and submissions were invited. No submissions were received from any of the above named prescribed bodies.

7.8. Design, Overlooking and Overshadowing

- 7.8.1. Taking into consideration that the I am satisfied that office and café uses would be acceptable on this site, and that I would I recommend that permission be refused for the residential element, as it would constitute a material contravention of the development plan, I consider that it is also necessary to consider the design of the development and issues of overlooking and overshadowing raised in the observation on the appeal.

Design

- 7.8.2. The previous development that was refused permission by the planning authority under P.A. Reg. Ref. 3878/20 consisted of a single office block, whereas the building subject to this application has in my opinion been designed as two separate structures, although joined at ground floor level. The office element is located at the rear while the residential and café element would be located facing Mespil Road. The two structures are separated above ground floor level by a proposed communal terrace/roof garden. Therefore, the question that arises is whether or not it is appropriate to consider granting permission for the development subject to an amendment to the use of the front portion of the development facing onto Mespil Road, which constitutes the residential aspect of the development or refusing the entire development.
- 7.8.3. I note that a key part of this application was to seek to design a building that would address and overcome the refusal reasons in respect of P.A. Reg. Ref. 3878/20 for a six storey office building on the same site. The two refusal reasons in that application referred to excessive height, the restricted nature of the site, overshadowing and overbearing impacts which would have a serious injurious impact on the amenity of neighbouring properties, as well as being visually obtrusive and an incongruous form of development. The refusal reasons also referred to scale and mass with the building towering above the established historic terrace that would represents an over development of what is a transitional site. I referred the board to Section 4 for full details of the refusal reasons and I have concluded in section 7.7 above that I consider that the height of the current proposal to be acceptable .

7.8.4. I note that while the height has been reduced, the appellant's and the observer on the appeal both consider the proposed development would still result in overshadowing and overbearing impacts and I will examine these matters below. I also note that the current proposal before the board would have a total floor area of 1426.1sqm whereas the one previously refused permission had a proposed floor area of 2,583sqm, meaning that the current application represents only c55.2% of the floor area previously refused by the planning authority and is significantly refused proposal that that which the appellant and observer are seeking to compare the current proposal with.

7.8.5. I have assessed the propose plans and elevation the architects design statement and I am satisfied that the proposed design is appropriate and acceptable for this and would be finished in a n range of materials that would complement the existing adjacent structures in particular the protected structures, and if the board was mined to grant permission, the material finished could be subject to a condition requiring final agreement with the planning authority prior to the commencement of development.

7.8.6. Overlooking of Appellant's property

7.8.7. Due to the location of their home relative to the proposed development, and the presence of intervening structures including the existing office building on the application site, that stands between the appellants home and the proposed extension, I am satisfied that the appellant would not be affected in any way by overshadowing and would not be subject to any loss of amenity by reason of overbearance.

Overlooking of Observer's property

7.8.8. The observer states that the front of their property No. 39 Mespil Road, the protected structure to the immediate west would be overlooked by the proposed development. As stated earlier, the area to the front of No. 39 is currently being used as a car park, associated with the rental of cars and the premises has been in use as an office for at least 45 years. It is already observable and overlooked from the adjacent house/office on the terrace to the immediate west and from the office development to the east as well as from the public road, while pedestrians and cyclists walk along the side of No 39. I also note that a mature tree has been removed from the front of the observers property and this opened up the front of the site to additional views

from the public road. I am satisfied that the proposed development would not result in any unacceptable overlooking of the ground to the front of No 39 Mespil Road.

- 7.8.9. The small courtyard area at the side of No 39 Mespil Road is marked by a wrought iron fence and is exposed to passing pedestrians. The building has been designed so that no windows or the communal space will directly overlook this small area and I am satisfied that the proposed development would not result in any unacceptable overlooking of the courtyard at No 39 Mespil Road.
- 7.8.10. The observer also states that the rear windows of No. 39, the rear extension and the private garden area at the rear will be overlooked over the shared boundary. On my site visit I observed that the existing rear garden area, which is small is already observable by pedestrians walking along the path at the side of the observers property and is also observable, although from a greater distance from the existing office block on the site and the office block to the east. A note that the design of the new cantilevered office extension incorporates a stair core and solid wall immediately adjacent to the garden of No 39 Mespil Road which would restrict any direct overlooking, while the proposed 1st floor podium terrace/roof garden, is proposed by condition of the planning authority to have a raised boundary that would prevent any overlooking of the property. I consider that condition to be reasonable. I also note that the stair core serving the residential section of the front of the building would have a solid wall that would not create any overlooking of the central courtyard. I further note that a row of trees has been planted along the rear boundary of No. 39, which act as a visual buffer. The applicant proposes to use fritted glazing to mitigate any potential for oblique overlooking of adjacent properties, and while I am satisfied that there will be no direct overlooking of the rear garden area, if the board was minded to grant permission, a condition could be attached that would require a section of the glazing on the western facade of the building, closest to the rear garden of No. 39 to be fitted with opaque rather than fritted glazing at both second and third floor levels, similar to what i proposed by the applicant in respect of the bedroom windows on the eastern side of the proposed apartments.

Overshadowing of Observer's property

- 7.8.11. The observer considers that the levels of sunlight to the private garden at No 39 Mespil Road were not examined and the introduction of a building immediately adjacent will be detrimental to the rear garden of No. 39 Mespil Road. They do not

however state that the building has been in office use since at least 1979. The observers also notes that it is not clear from the Sunlight and Daylight Assessment the assumptions that been made in relation to the internal layout and use of the rooms the No. 39. However, the observer did not provide any details of the use of the rooms and as the use of the building, is as an office, I consider paragraph 2.2 of the BRE Guidelines (2022) relevant which states that the BRE Guidelines are intended for use for rooms in adjoining dwellings where daylight is required, including living rooms, kitchens, and bedrooms. Windows to bathrooms, toilets, storerooms, circulation areas, and garages need not be analysed. The guidelines may also be applied to any existing non-domestic building where the occupants have a reasonable expectation of daylight; this would normally include schools, hospitals, hotels and hostels, small workshops, and some offices'. The offices at No 39 appear to be used as part of a car hire business, so would have not specific requirement for internal light.

7.8.12. Notwithstanding the above, the daylight and sunlight assessment report submitted with the application addresses Vertical Sky Component, Annual and Winter Probable Sunlight Hours in respect of both No's 39 and 40 Mespil Road as well as the effect on sun on ground in the existing rear garden of No 39 and in the open space areas proposed as part of this application.

7.8.13. The planning officer noted that sunlight and daylight assessment indicated that the development would largely have a negligible impact on daylight levels within the adjoining commercial properties, No's 39 and 40 Mespil Road, which are in office use, and that they would not experience such an adverse reduction in daylight levels as to warrant refusing permission. They also considered that overshadowing impacts would largely be confined to the basement area containing plant at the rear of No 40 Mespil Road and that adverse overshadowing impacts on the adjoining outdoor amenity spaces would not arise.

Daylight to Existing Buildings

7.8.14. Daylight is measured by the applicant by way Vertical Sky Component (VSC) and is a measure of the amount of sky visible from a given point (usually the centre of a window) within a structure. The BRE guidelines state that a VSC of greater than 27% should provide enough skylight and that any reduction below this level should be kept to a minimum and that if the VSC is both less than 27% and less than 0.8 times

its former value, with the new development in place, occupants of the existing building would notice the reduction in the amount of skylight

- 7.8.15. Of the nine windows at No 39 Mespil Road that were assessed, eight are compliant with the BRE Standard, while one of the ground floor windows is not. I also note the results in respect of the adjacent office developments and given that all adjacent uses are office and that the window at the rear of No 39 Mespil Road that does not meet the BRE requirement, already had a low VSC calculation of 20.09%, which I consider to be a factor of the presence of already large buildings to the south and east, I am satisfied that the impact of the proposed development on daylight at the rear of No 39 would be acceptable and would not be of degree that would warrant a refusal of permission.

Sunlight to No 39 Mespil Road

- 7.8.16. Sunlight to existing buildings is assessed by the applicant in terms of annual probable sunlight hours (APSH) and winter probable sunlight hours (WPSH), and if a room can receive more than 25% of APSH, and 5% of APSH in the winter months between 21 September and 21 March, then it should still receive enough sunlight.
- 7.8.17. In order for the reduction in APSH/WSPH to be noticeable, the available sunlight must fall below the 25% or 5% levels and be less than 0.8 times its previous baseline value. The assessment indicates that while some of the six windows assessed at the rear of No 39 Mespil Road, will see a reduction in the APSH and WPSH that they will all be compliant with the recommendations of the BRE Guidelines.

Sunlight to existing amenity spaces at Observer's property

- 7.8.18. The BRE guidelines recommends that at least 50% of amenity areas should receive at least two hours of sunlight on the 21st of March and that a noticeable effect would only exist if this standard were not met and of the area that does receive more than two hours is less than 0.8 times its former value. The Daylight and Sunlight assessment includes an assessment of existing sunlight availability to the rear amenity area at No 39, and sunlight availability with the proposed development in place, and the analysis has demonstrated that there would be zero impact on the extent of the existing amenity space that received at least two hours of sunlight on the 21st of March as result of the proposed development with both the existing and proposed areas being 48.2% of the amenity space at the rear of No 39 Mespil Road.

This means that the proposed development would not result in any significant overshadowing of the amenity space, which was a concern expressed by the observer on the appeal.

- 7.8.19. The assessment also indicates that the two proposed open space areas on the application site, being the ground floor area between Mespil Road and the café and the first floor communal open space area for the apartments, would both respectively receive in excess of the minimum requirement, respectively receiving more than two hours of sunshine on March 21st over 91.6% and 87.4% of their areas.
- 7.8.20. I am satisfied that the applicant has assessed the potential impact of the proposed development in terms of how the design of the building would impact the adjacent properties in terms of overlooking and overshadowing and I am satisfied that the proposed development would not result in any significant level of overshadowing of or overlooking of adjacent properties, which are in office use, that would warrant a refusal of permission.

7.9. Impact on Protected Structure and Conservation Areas

- 7.9.1. Section 14.6 of the development plan refers to transitional zones and the need to protect the more environmentally sensitive zone. In this case the adjacent land to the immediate west is zoned Z8 'Georgian Conservation Area', where it is the objective to protect the existing architectural and civic designing character, and to allow only for limited expansion consistent with the conservation objective. I have previously considered in Section 7.8 above that the design of the proposed development, in particular the facade facing onto Mespil Road would be acceptable and I do not consider that the design of the structure would negatively impact the Georgian Conservation Area. I also note that the wider area is a conservation area on both sides of the grand canal and that significant development has been carried out in this area in the recent past, including the office development to the immediate east of the site and at Wilton Place on the city side of the Grand Canal, where significant new development is currently being carried out and nearing completion. I am satisfied that the proposed development would not have a negative impact on the character of the protected structure or the conservation area and would form an appropriate and acceptable scale of development on this site, appropriately transitioning between the taller office building to the east and the lower level terrace of protected structures to the west. I also consider that the ground floor cafe would bring some animation to

the street, which would be a welcome addition to Mespil Road, and should the board be minded to grant permission that signage including free standing and façade mounted signage could be addressed by way of a condition.

- 7.9.2. While the observer expresses concern about the impact of the development on No39 Mespil Road, the end of terrace/protected structure, I noted on the occasion of the site visit that this property is no longer in use as a residence as it was originally designed and from the planning history, it appears to have been in office use for at least 45 years. Many of the other original houses on the protected terrace have also been converted to office use. I further note that No 39 Mespil Road is used as a car rental facility and the entire front and the area along the side of the building was full of cars on the occasion of the site visit. I consider that the use of the front and side areas have a significantly greater negative impact on both the conservation area and the protected structure than the proposed building that is the subject of this application would have.

7.10. Potential for use proposed apartments as office space

- 7.10.1. Having considered the principle of the café, offices and apartments and to further emphasise that the café/apartment and offices blocks have been designed as two separate developments on the one site, I note that the floor-to-floor heights of the offices is 3.25m, with a floor to ceiling height of 2.59m, with additional roof space of 0.41m for the installation of services. The floor decks between the offices would be 0.25m deep.
- 7.10.2. The apartments would have floor to ceiling heights of 2.6m, while the floor decks would be 0.4m deep, with no space indicated on the plans and sections as being available for the installation of services in the ceilings.
- 7.10.3. The mechanical and electrical services installations report indicate that the apartments and offices have been designed to different standards and to operate differently. For example, the air supply to the offices would be provide via ceiling mounted air conditioning units that would act as heating and cooling units, whereas the apartments would be ventilated via ventilators installed in the external walls. It also stated that there is no requirement for cooling in the apartments. The lighting for the offices would also be run through the ceiling voids and the additional floor to floor heights of the offices would make this possible.

7.10.4. Should the board agree with my earlier conclusion that the apartment use is incompatible with the Z6 zoning and should not be granted permission, I am also satisfied that the proposed residential section of the development would not be capable of being easily converted to use as office space and a condition to that effect would not be appropriate. Therefore, as per my earlier conclusions, I consider that the development has been designed as two separate and specific developments on the one site and the applicant was aware from the outset that the residential development would only be acceptable during the life of the 2016-2022 development plan. I do not consider it appropriate to seek that the scheme be redesigned by way of condition and I would recommend that permission should be refused for this development in its entirety.

7.11. Right of Way

7.11.1. The third parties have raised concerns that the area subject to the application is a means of access to the public that will be lost or diminished by the proposed development. However, the submitted plans indicate that a right of way to Burlington Road from Mespil Road actually runs along but outside of the western boundary of the site, along the side of the adjacent end of terrace property No 39 Mespil Road, which is owned by the observer to the appeal. No right of way is shown on the land registry website in respect of either the application site or the observers property, but on the day of the site visit, I did observe the pedestrian/cycle access route as it is shown on the plans, and I also observed pedestrians using this route. The access to and through the application site is gated and controlled by a code, and I am satisfied that it is not available as a means of access for the general public either to or through the application site and the proposed development would have no impact on the existing access through the adjacent property at No 39 Mespil Road.

7.12. Loss of Trees

7.12.1. The appellant expressed concerns about the proposed removal of the two large sycamore trees and other smaller trees from the site that they consider are integral to the character of the area and in their opinion cannot be mitigated. The observer, the owner of No 39 Mespil Road expressed similar concerns and state that the loss of the trees would be very noticeable for passers-by on the canal and particularly so for the owners of No 39 and No 40, while they note that the planning officer stated the removal of the sycamore trees would be regrettable, but that their retention

would militate against a significant quantum of development on this service and accessible infill site.

- 7.12.2. The arborist report submitted with the application included an aerial photograph showing a large mature tree located within the front garden of No 39 Mespil Road, the property owned by the observer on the appeal. The Arborist report also notes that this tree is now removed. The tree is evident in google street view from July 2018, but was removed by July 2021. The now removed tree was located within the conservation area and formed part of the boulevard edge along Mespil Road. I consider that its loss has a much more significant impact on the character of the canal area than would the loss of the two sycamore trees on the application site.
- 7.12.3. The application included a Landscape Visual Impact Assessment and a Landscape Design Rationale. The proposals include the planting of new trees to compensate for the removal of existing trees at the front of the site facing Mespil Road, as well as the softening of the existing landscape around the existing office building. As part of the construction works, it is proposed that a 7.5m high semi-mature Field Maple will be planted inside of and close to the street edge that would align with other trees located along Mespil Road in front of the other offices on the street. Field Maples have capacity to grow to 20m in height and would also compensate for the loss of the mature tree that has been removed from the observers property. It is also proposed to plant two 6.5m high Downy Birch trees in tree pits between the café terrace and Mespil Road.
- 7.12.4. I also note that the application included a protected species (Bats and Birds) assessment prepared by an ecologist with surveys dated September 2020 and September 2022, with a specific objective to assess the potential of the site for bat roost features and also to establish the level of bat activity and the range of bat species on and around the site, including the adjacent house, No 39 Mespil Road, the existing office block on the site and along the Grand Canal. A survey was also carried out in September 2022 for birds' nests as the survey was carried out outside of the breeding season.
- 7.12.5. No bats were observed on or adjacent to the site and it was noted that the installation of spotlights on and beside both existing sycamore trees reduced their bat roost potential. Faint bat passes were recorded on the occasion of both site visits but were determined to be at a distance from the site. The site was evaluated as

being of low importance for bats and bird species with limited suitable features for nesting birds or roosting sites for bats and no significant impacts are expected. The species impact assessment recommended that an ecologist should be present on site for the felling of the trees, which should be done outside of the bird breeding season, that the site should be surveyed prior to the felling off the trees and that any lighting should be designed to be bat friendly.

- 7.12.6. I am satisfied that the removal of the existing trees from the site is acceptable and would be more than compensated for by the proposed landscaping plans and the planting of new trees at the front of the site, as well as other landscaping proposals around the site at ground level, on the roof terrace/garden and via a sedum roof on the proposed office extension.

8.0 AA Screening

- 8.1. An AA Screening exercise has been completed in respect of the proposed development. Please refer to Appendix 2 to this report for further details.
- 8.2. In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000] is not required.
- 8.3. This conclusion is based on:
- Objective information presented in the applicant's Screening Report;
 - The limited zone of influence of potential impacts, restricted to the immediate vicinity of the proposed development;
 - Standard construction and operational surface water pollution controls that would be employed regardless of proximity to a European site and the effectiveness of same;
 - The available and planned capacity in the Ringsend Wastewater Treatment Plant to facilitate future development in compliance with the provisions of the Water Framework Directive;

- Distance from European Sites;
- The limited potential for pathways to any European site;
- The nature and extent of predicted impacts, which would not affect the conservation objectives of any European Sites.

8.3.1. No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

9.0 Recommendation

I recommend that permission is refused for the following reasons.

10.0 Reasons and Considerations

- 1 Having regard to the zoning provisions of the Dublin City Development Plan, 2022 - 2028 for the area within which the site is located, 'Z6' – (Employment/Enterprise), and to section 14.3 of the development plan that states that there is a presumption against uses not listed under the permissible or open for consideration categories in Zone Z6 areas, and to the proposal for residential use over three floors at the northern end of the development, which is a use that is neither permissible nor open for consideration, it is considered that the proposed residential element, which has been designed specifically for residential purposes, in respect of floor to ceiling height and layout, would be contrary to the policies and objectives aimed at promoting commercial uses at this Z6 zoned location. The proposed residential element of the development would therefore materially contravene the Z6 Employment/Enterprise land use zoning objective of the Dublin City Development Plan, and to permit the development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Joe Bonner
Senior Planning Inspector

8th July 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-315421-22		
Proposed Development Summary	Construction of extension, 4 storey building mixed use development with 3 apartments and café with all associated site works		
Development Address	Mespil Court, Mespil Road & Burlington Road, Dublin 4, D04 E516		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes	X	Class 10(b)(i) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Threshold = 500 dwelling units.	The development includes 3 apartments. Proceed to Q.4

		<p>Class 10(b)(v) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended).</p> <p>Threshold = Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.</p>	<p>The site has an area of 0.22ha.</p>	
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-315421-22	
Proposed Development Summary	Construction of extension, 4 storey building mixed use development with 3 apartments and café with all associated site works	
Development Address	Mespil Court, Mespil Road & Burlington Road, Dublin 4, D04 E516	
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.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment?	The subject development would comprise the construction of a narrow extension to the front of an existing office building with a maximum of 4 storeys above basement level on an infill site bound by a terrace of three storey offices (former houses) to the west and a 6 storey over basement office building to the east, and a 5 storey office block already on the site. The proposed office, café and residential development would not be exceptional in the context of the existing environment.	No
Will the development result in the production of any significant waste, emissions or pollutants?	During the construction phase, the proposed development would generate waste during excavation and construction. However, given the moderate size of the proposed building I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the construction or operational phases due to the limited size of the site and the nature of the proposed use.	No

<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>The proposed development would consist of an extension to the existing office building accommodating a café at ground and basement level and three apartments at first to third floor levels, all fronting onto Mespil Road, with offices located to the rear that would connect to the existing office development at second and third floor levels. The proposal is not considered exceptional in size in the context of the surrounding or nearby commercial or residential buildings.</p> <p>The adjacent sites are all built out, and while comprehensive redevelopment is being carried out on the southern side of the Grand Canal at Wilton Place, that development is nearing completion. Owing to the serviced urban nature of the site and the infill character of the development, I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.</p>	<p>No</p> <p>No</p>
<p>Location of the Development</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>The application site is not located in or immediately adjacent to any European site.</p> <p>The nearest Natura 2000 sites are South Dublin Bay SAC (Site Code:000210) and South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) which are c2.3km east of the site.</p> <p>The Grand Canal is located c40m north of the nearest part of the proposed extension and enters Grand Canal Dock, where the Rivers Liffey and Dodder meet, before flowing through Dublin port and connecting with the waters of the SPA and SAC near the mouth of Dublin Harbour. The site is located within a serviced urban area and the site will be connected to public surface and foul sewers. I do not consider that there is potential for the proposed development to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p> <p>No</p>
<p>Conclusion</p>		

There is no real likelihood of significant effects on the environment.

EIA not required.

Inspector: _____

Date: _____

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)

Appendix 2

Screening for Appropriate Assessment Screening Determination

Step 1: Description of the project

Permission is sought for the construction of an extension to an existing office building consisting of a 4 storey building mixed use development with a café at basement and ground floor level and 3 apartments above as well as two floors of cantilevered office at the rear, connected to the existing office building on the site. I refer the board to the Appropriate Assessment Screening Report and to other documents provided by the applicant for further details regarding the proposed development.

I have considered the proposed development, in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

An Appropriate Assessment Screening Report has been prepared by Deborah Darcy, Ecologist, on behalf of the applicant and the objective information presented in that report informs this screening determination.

The site of the proposed development is located on the southern side of Mespil Road, immediately south of the Grand Canal, mid-way between Baggot Street Bridge to the east and Leeson Street Bridge to the west. The site is T-shaped and narrow along Mespil Road with 9.3m of road frontage and extends back in a south eastern direction for between 60m and 63m before widening out at the rear to form a rectangular shaped area where the existing 5 storey red brick office building is located, along with surface level parking spaces. A mix of two storey houses and 5 storey apartments are located to the south, while commercial buildings are located either side of the Mespil Road frontage in the form of a modern 6 storey over basement office block to the northeast, and a terrace of three storey buildings (former houses but in use as offices) to the southwest, which are protected structures.

I have provided a detailed description of the site location and its surrounding context in section 1 of my report, while the development is described in detail in section 2. Detailed specifications of the proposed development are provided in the AA Screening Report and in other planning documents provided by the applicant, which are listed in section 2.2 of my report, including a Tree Assessment, a Flood Risk Assessment, a Protected Species Bats and Birds Assessment, a Construction and Demolition Waste Management Plan and a Preliminary Construction and Environmental Management Plan.

The development will include the removal of two large mature trees and the excavation of the ground to create a basement level. There are no annex 1 habitats present within or approximate to the proposed development site and the site is deemed to have a very low ecological value. The habitats present on the site consist of built land (BL3) and scattered trees and Parkland (WD5). It also contains some herbaceous borders (BC4) along the sides of the pedestrian path running through the site.

No submissions were received in respect of the proposed development from prescribed bodies.

The closest European sites to the development site are:

- South Dublin Bay SAC (Site Code: 000210) - c2.3km east of the site.
- South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) - c2.3km east of the site.

The applicants AA Screening Report states that due to the extent of the discharge plume that has been modelled in respect of the NIS for the Ringsend WWTP upgrade project, that while South Dublin Bay is unaffected by the effluent plume, the following sites could potentially be within the zone of influence of construction activities during the operation phased, due to hydrological connectivity:

- South Dublin Bay and River Tolka SPA (004024)
- North Dublin Bay SAC (000206)
- North Bull Island SPA (004006)
- Rockabill to Dalkey SAC (003000) (not SPA as referred to in table at page 15 of the AA Screening Report)

Step 2: Potential impact mechanisms from the project

The development site is not located within or adjoining any Natura 2000 sites and I do not consider that there is potential for any direct impacts such as habitat loss, direct emissions, or species disturbance or mortality as a result of the proposed development. Furthermore, the site does not contain any suitable ex-situ habitats for the 'Special Conservation Interests' SCIs of the closest SPAs.

The applicant has applied the source-pathway-receptor model in determining possible impacts and effects of the proposed development.

Sources of potential indirect impact could be:

- Discharge of treated effluent from Ringsend WWTP into Dublin Bay during both the construction and operational phases.
- Accidental pollution event leading to silt laden or polluted (cement or hydrocarbon) construction silt runoff to drainage infrastructure or to groundwater - temporary impact.
- Noise and dust emissions during construction released to land or air.
- Spread of invasive species.

Where an ecological/hydrological pathway exists, these indirect impacts could negatively alter the quality of the existing environment, negatively affecting qualifying interest species and habitats that are dependent on high water quality, that require maintenance of natural vegetation composition and for mobile species, unimpeded access.

Having regard to the nature of the site and its distance from and lack of connectivity to Natura 2000 sites, I do not consider that there would be any other potential impact mechanisms.

Groundwater

In the context of groundwater pollution, a distance of c 2.3km separates the site from the nearest sites being the South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA, with the intermittent are heavily developed, and I am satisfied that the separation distance would filter any pollutants to negligible

concentrations before they could reach the SAC or SPA. Therefore, I am satisfied that groundwater can be ruled out as a feasible pathway.

Hydrocarbons, solvents, cementitious materials to surface water or groundwater

In the context of groundwater pollution, a distance of c 2.3km separates the site from the nearest sites being the South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA, with the intermittent area heavily developed. I am satisfied that there are no direct or indirect hydrological links between the development site and any European site and that there is no potential for significant effects from the proposed development on European sites by reason of contamination of groundwater, either during the demolition, construction or operational phases of the development, that would undermine the conservation objectives of the European Site/s by reason of the project alone.

The Grand Canal is located opposite to the site and could act as a potential pathway for pollutant. Notwithstanding that there is a lack of evidence of historic flooding of the site, and that nature of the proposed works would include standard work practices and that during the operational phase, surface water drainage proposal will include SuDS measures and standard surface drainage measures associated which should be sufficient to prevent contamination of surface water, I will continue to consider in Section 4 below whether the proposed development could undermine against the conservation objectives of the site by reason of surface / storm water discharge.

Noise and Dust

With respect to potential impacts from noise and dust, the Qualifying Interest's (QI's) for South Dublin Bay SAC (000210) and North Dublin Bay SAC (000206) relate to habitats and/or plant species only, and I am satisfied that they would not experience significant impacts from construction related noise or dust, that would undermine the conservation objectives of the European Sites by reason of the project alone.

The applicant included Rockabill to Dalkey SAC as it has one QI being the Harbour Porpoise, what may frequent the harbour area. I am satisfied that Harbour Porpoise would not experience significant impacts from construction related noise or dust, such that the project alone would not undermine the conservation objectives of the European Site.

With respect of the South Dublin Bay and River Tolka Estuary SPA (004024) and North Bull Island SPA (004006), the development site does not contain any habitats that would be visited by qualifying bird interests for the sites that are listed in Table 2 of the AA Screening Report or in the NPWS website www.npws.ie and the development site is at sufficient remove from the SPA sites to avoid significant impacts from dust and noise impacting on the qualifying interests, such that the project alone would not undermine the conservation objectives of the European Sites.

Spread of invasive species

While the AA Screening report examined the potential for the spread of invasive species as a result of the proposed development, and the presence of Holm Oak was noted on site, I am satisfied having reviewed the Screening Report and the construction practices proposed in the Construction and Demolition Waste

Management Plan and the Preliminary Construction and Environmental Management Plan that those practices are not mitigation measures but constitute a standard established approach to construction works. Their implementation is or would be necessary for a development on any similar site regardless of the proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on such similar sites whether or not they were explicitly required by the terms or conditions of a planning permission. In any event, if these practices were not applied or were applied and failed, I am satisfied that it would be unlikely that there would be any significant effects on the designated European sites due to the spread of invasive species.

Having regard to the nature of the site and its distance and lack of connectivity with Natura 2000 sites, I do not consider that there would be any other potential impact mechanisms.

Step 3: European Sites at risk

Having regard to the potential impact mechanisms from the proposal, the European site(s) and qualifying features potentially at risk are outlined in the following table.

Table 1 European Sites at risk from impacts of the proposed project

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Wastewater discharge	The site connects to public sewer that flows into the Ringsend Wastewater Treatment Plant that occasionally overflows into Dublin Bay	South Dublin Bay SAC	Mudflats and sandflats not covered by seawater at low tide; Annual vegetation of drift lines; Salicornia and other annuals colonising mud and sand; Embryonic shifting dunes
		South Dublin Bay and River Tolka Estuary SPA	Light-bellied Brent Goose, Oystercatcher; Ringed Plover; Grey Plover; Knot; Sanderling; Dunlin; Bar-tailed Godwit; Redshank; Black-headed Gull; Roseate Tern; Common Tern; Arctic Tern; Wetland and Waterbirds
		North Dublin Bay SAC	As per South Dublin Bay SAC plus, Atlantic salt meadows; Mediterranean salt meadows; Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes); Fixed coastal dunes with herbaceous vegetation (grey dunes); Humid dune slacks; Petalwort

		North Bull Island SPA	Light-bellied Brent Goose; Shelduck; Teal; Pintail; Shoveler; Oystercatcher; Golden Plover; Grey Plover; Knot; Sanderling; Dunlin; Black-tailed Godwit; Bar-tailed Godwit; Curlew; Redshank; Turnstone; Black-headed Gull; Wetland and Waterbirds
		Rockabill to Dalkey SAC	Harbour Porpoise
Surface / Storm water discharge	The site connects to the public stormwater water network, while the site is located directly opposite to the Grand Canal that flows into the River Liffey at Grand Canal Dock.	South Dublin Bay SAC South Dublin Bay and River Tolka Estuary SPA	As above As above

Step 4: Likely significant effects on the European sites alone

Taking account of baseline conditions, and the effects of ongoing operational plans and projects, it was considered whether there is a likely significant effect 'alone'.

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Yes/No)?	
		Wastewater Discharge	Surface Water pollution
South Dublin Bay SAC (000210)			
Mudflats and sandflats not covered by seawater at low tide; Annual vegetation of drift lines; Salicornia and other annuals colonising mud and sand; and Embryonic shifting dune	To maintain the favourable conservation condition	No	No

South Dublin Bay and River Tolka Estuary SPA (004024)			
Light-bellied Brent Goose, Oystercatcher; Ringed Plover; Grey Plover; Knot; Sanderling; Dunlin; Bar-tailed Godwit; Redshank; Black-headed Gull; Roseate Tern; Common Tern; Arctic Tern; Wetland and Waterbirds	To maintain the favourable conservation condition except for Grey Plover which is to be removed and does not have a conservation objective	No	No
North Dublin Bay SAC (000206)			
Mudflats and sandflats not covered by seawater at low tide; Atlantic salt meadows; Mediterranean salt meadows; Petalwort ralfsii.	To maintain the favourable conservation condition of the bird species	No	No
Annual vegetation of drift lines; Salicornia and other annuals colonising mud and sand; Embryonic shifting dune; Shifting dunes along the shoreline with Ammophila arenaria (white dunes); Fixed coastal dunes with herbaceous vegetation (grey dunes); Humid dune slacks;	To restore the favourable conservation condition of the bird species	No	No
North Bull Island SPA (004006)			
Light-bellied Brent Goose; Shelduck; Teal; Pintail; Shoveler; Oystercatcher; Golden Plover; Grey Plover; Knot; Sanderling; Dunlin; Black-tailed Godwit; Bar-tailed Godwit; Curlew; Redshank; Turnstone; Black-headed Gull; Wetland and Waterbirds	To maintain the favourable conservation condition of the bird species	No	No
Rockabill to Dalkey SAC (003000)			
Harbour Porpoise	To maintain the favourable conservation condition of the bird species	No	No
Step 5: Where relevant, likely significant effects on the European site(s) 'in-combination with other plans and projects'			

I consider that the potential for in-combination effects from this development would be limited to the cumulative impact Wastewater Discharge and of Surface / Storm Water Drainage and associated with other developments in the area. In that regard I note that while extensive redevelopment is ongoing at Wilton Place to the north/ city side of the Grand Canal, all other nearby sites are fully developed

In addition, I note that the upgrade of the Ringsend Wastewater Treatment Plant permitted under Board Ref. PA29S.301798 is due to be completed in 2025, that will increase the capacity of the plant, which would mean it would be completed prior to the completion of the proposed development.

I note the construction practices proposed and required by conditions imposed on the above referenced grant of permission and in my mind, they are not mitigation measures but constitute a standard established approach to construction works. Their implementation is or would be necessary for a development on any similar site regardless of the proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on such similar sites whether or not they were explicitly required by the terms or conditions of a planning permission. In any event, if these practices were not applied or were applied and failed, I am satisfied that it would be unlikely that there would be any significant effects on the designated European sites due to the nature and scale of the developments proposed, dilution effects, separation distances and the extent of intervening urban environment, together with the conservation objectives of the designated sites, being South Dublin Bay SAC (000210) and South Dublin Bay and River Tolka Estuary SPA (004024), both located 2.3km to the east of the site, North Dublin Bay SAC (000206), North Bull Island SPA (004006) and Rockabill to Dalkey SAC (003000)

I conclude that the proposed development would have no likely significant effect in combination with other plans and projects on the qualifying features of any European site(s). No further assessment is required for the project.

Overall Conclusion - Screening Determination

An AA Screening exercise has been completed in respect of the proposed development. Please refer to Appendix 2 to this report for further details.

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

This conclusion is based on:

- Objective information presented in the applicant's Screening Report;
- The limited zone of influence of potential impacts, restricted to the immediate vicinity of the proposed development.
- Standard construction and operational surface water pollution controls that would be employed regardless of proximity to a European site and the effectiveness of same;

- The available and planned capacity in the Ringsend Wastewater Treatment Plant to facilitate future development in compliance with the provisions of the Water Framework Directive;
- Distance from European Sites;
- The limited potential for pathways to any European site;
- The nature and extent of predicted impacts, which would not affect the conservation objectives of any European Sites.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.