



Proposed Development	Demolish buildings and construct 114 apartments and four commercial units in four blocks of 3 to 6 storeys, and associated development
Location	Nos.59A, 61 & 63 Fairview Strand, nos.19, 21 & warehouse Esmond Avenue and rear of 19 Philipsburgh Avenue, Fairview, Dublin 3
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	LRD6015/22-S3
Planning Authority Decision	Grant Permission
Applicant	Banner A Cuig Limited
Type of Application	Large-Scale Residential Development
Type of Appeal	First & Third Parties
Appellant(s)	Banner A Cuig Limited; Ciarán Lawlor & Alana Lawlor; Pauline Murnin & Others.
Observers	None

Date of Site Inspection

20th March 2023

Inspector

Colm McLoughlin

Contents

1.0 Introduction	4
2.0 Site Location and Description	4
3.0 Proposed Development	5
4.0 Planning History.....	8
5.0 Planning Authority Decision	11
6.0 Planning Policy	20
7.0 The Appeals	25
8.0 Assessment	32
9.0 Environmental Impact Assessment Screening	73
10.0 Appropriate Assessment	77
11.0 Conclusion and Recommendation	90
12.0 Recommended Order.....	90
13.0 Conditions	97
Appendices	109

1.0 Introduction

- 1.1. This report provides an assessment of appeals for a proposed large-scale residential development (LRD) under the provisions of the Planning and Development Act 2000, as amended (hereinafter referred to as 'the Act of 2000'). The subject application was granted permission by the Planning Authority, Dublin City Council, and subsequently appealed to An Bord Pleanála by the LRD applicant and two third parties.

2.0 Site Location and Description

- 2.1. Situated approximately 1.8km to the northeast of Dublin city centre in the Fairview area on the northern side of Fairview Strand (R803 regional road), the appeal site is intersected by Esmond Avenue, backs onto a lane serving houses on Turlough Gardens to the north, adjoins the rear gardens to houses along Philipsburgh Avenue to the east and adjoins apartment complexes in Fairview Close and Richmond Gardens to the west. It is stated to measure a gross area of 0.58 hectares and is approximately 500m to the southwest of the commercial core to Fairview village. The site comprises a pair of unoccupied two-storey semi-detached houses (nos. 61 and 63) and a dry cleaner's premises fronting onto Fairview Strand. To the rear of Fairview Strand along the west side of Esmond Avenue the site comprises a basement car park structure and a gymnasium facility and commercial unit with extensive front yard service area. On the east side of Esmond Avenue the site comprises a joiner's premises, a furniture shop, a dance studio and the rear garden of a residential property (no.19 Philipsburgh Avenue).
- 2.2. The appeal site boundaries generally consist of a mix of walls, fences and security hoarding. The Ballybough Jewish Burial Grounds and associated Gate Lodge house, which are Protected Structures, adjoins the site to the west along Fairview Strand. Based on the first-party appellant's topographical survey, land levels on site drop very steadily by approximately 1.5m from the northern boundary with Turlough Gardens to the southern boundary with Fairview Strand.

3.0 Proposed Development

3.1. The proposed development would consist of the following elements:

Demolition Works

- demolition and removal of various structures measuring a stated gross floor area of 1,436sq.m, comprising a single-storey dry cleaner's premises, three commercial buildings, a two-storey business centre, a single-storey temporary building, residential outbuildings, boundary walls, gates and hoardings and the interior to a basement car park structure;

Construction Works

- construction of 110 apartments and four commercial units in three blocks between three and six storeys in height with a gymnasium (121sq.m), a shop unit (48sq.m) and renovated basement car park (855sq.m) to block A, and a café unit (59sq.m) and a basement level (363sq.m) service area to block B;
- renovation and reuse of nos.61 and 63 Fairview Strand, a pair of two-storey, semi-detached houses, as four maisonette apartments;
- construction of a three-storey side extension to no.63 Fairview Strand to accommodate a dry cleaner's premises and an upper-floor apartment;

Ancillary and Supporting Works

- vehicular access from Fairview Close to block A basement car park (855sq.m), pedestrian link with emergency-vehicle access only between Esmond Avenue and Fairview Close, gated-pedestrian route from Fairview Strand to Fairview Close, upgraded pedestrian routes along Esmond Avenue;
- all ancillary site development and services, including cycle parking spaces, motorcycle spaces, bin stores, electricity substations/rooms, plant rooms, communal and public open spaces, landscaping, paving, boundary treatment, external lighting, services and connections, drainage and surface water attenuation, water storage tanks, green roofs and roof-mounted solar photovoltaic panels and signage.

3.2. The following tables set out the key features of the proposed development:

Table 1. Development Standards

Site Area (gross/net)	0.58ha / 0.52ha
No. of apartments/maisonettes	114
Part V units (%)	15 (13%)
Demolished Gross Floor Area (GFA)	1,436sq.m
Residential GFA	9,456sq.m
Non-residential GFA (% GFA)	294sq.m (3%)
Total Residential/Non-residential GFA	9,750sq.m
Basement Car Park / Service Levels	1,218sq.m
Total GFA with basement levels	10,968sq.m
Residential Density (net excluding Esmond Avenue)	220 units per ha
Communal Open Space	1,205sq.m
Public Open Space (% of net site area)	204sq.m (4%)
Plot Ratio (net)	1.82
Site Coverage (net)	45%

Table 2. Unit Mix

	One-bedroom	2-bedroom (3-person)	2-bedroom (4-person)	3-bedroom (5-person)	Total
Apartments	57	11	44	2	114
% of units	50%	9.7%	38.6%	1.7%	100%

Table 3. Stated Maximum Building Heights

Storeys	Height
6	18.1m

Table 4. Parking Spaces

Car parking	26
Motorcycle parking	2
Cycle parking	263

3.2.1. In addition to the standard contents, the LRD application was accompanied by various technical reports with appendices and drawings, including the following:

- Statement of Consistency and Planning Report;
- Statement of Response to Opinion of Dublin City Council (DCC);

- Environmental Impact Assessment Screening Report;
- Appropriate Assessment (AA) Screening & Natura Impact Statement (NIS);
- Statement in accordance with Article 103(1A)(a) of the Regulations;
- Design Report and Visual Impact Statement;
- Traffic and Transport Assessment;
- Engineering Services Report;
- Sunlight, Daylight and Shadow Assessment Report;
- View Verification;
- Part V Report;
- Ecological Impact Assessment;
- Bookend Building Report;
- Archaeological and Architectural Heritage Impact Statement;
- Photographic Record of Cemetery Wall;
- Archaeology Report;
- Bat Survey and Assessment of Associated Buildings;
- Social Community Audit & Child Care Analysis;
- DMURS Statement of Consistency;
- Mobility Management Plan;
- Flood Risk Assessment;
- Outline Construction Management Plan;
- Outline Construction and Environmental Management Plan (CEMP);
- Construction and Demolition Waste Management Plan;
- Landscape Rationale Report;
- Arboricultural Assessment;
- Report on the Pruning of the adjoining Sycamore;
- Service and Operation Management Plan;
- Building Life Cycle Report;
- Emergency Management Plan;
- Site Design Strategy Report;
- Housing Quality Assessment;
- Operational Waste Management Plan;
- Public Lighting Report;
- Basement Impact Assessment & Ground Investigations Report;
- Energy & Sustainability Statement Report;

- Microclimate Assessment;
- Car Parking Management Strategy.

4.0 Planning History

4.1. Appeal Site

4.1.1. The first-party appellant's document titled 'Statement of Consistency and Planning Report' and the report of the Planning Officer from the Planning Authority refer to the various planning applications relating to the appeal site, including the following relating to the east side of Esmond Avenue:

- An Bord Pleanála (ABP) reference (ref.) PL29N.233610 (DCC ref. 3939/08) - permission was refused by the Board in September 2009 for demolition of buildings and the construction of a two to three-storey block containing four live/work units and 13 apartments, as the proposal was considered to be contrary to the enterprise and employment zoning for the site and as the development would be visually incongruous and would result in overlooking of neighbouring houses.

4.1.2. The following application relates to the west side of Esmond Avenue:

- DCC ref.4679/18 – permission was refused by the Planning Authority in February 2019 for the demolition of nos.61 and 63 Fairview Strand and the warehouse at no.3 Esmond Avenue, to allow for the construction of 97 apartments in two blocks of between three and six storeys, due to the historical significance of nos.61 and 63 Fairview Strand, the overdevelopment of the site impacting on light and privacy to future and existing neighbouring residents, and the visually incongruous appearance of buildings onto Esmond Avenue.

4.2. Surrounding Area

4.2.1. Recent planning applications within the immediate and wider area include:

- ABP ref. TA29N.312352 – a strategic housing development application was lodged in December 2021 to demolish existing buildings at nos.146a and 148/148a Richmond Road approximately 450m to the northwest of the appeal site, to allow for construction of 183 build-to-rent apartments and a café / retail unit in a six to ten-storey block. I am now aware of a decision on this application;
- DCC ref. LRD6006/23-S3 – application for a large-scale residential development comprising the demolition of industrial structures and construction of three blocks of four to ten storeys consisting of 133 apartments, artist studios, a retail unit and a gym at the former Leyden’s Wholesalers and Distributors on Richmond Avenue approximately 380m to the northwest of the appeal site. A decision is due on this in April 2023;
- DCC ref. 3295/21 – in January 2022 permission was granted by the Planning Authority for 35 apartments in two blocks of three and six storeys at 15 Richmond Avenue approximately 90m to the northwest of the appeal site;
- DCC ref. 3483/22 – following withdrawal of an appeal (ABP ref. 314092-22) in March 2023, permission was granted by the Planning Authority for 28 independent-living apartments in two blocks of three and six storeys at 9/9a Richmond Avenue approximately 70m to the northwest of the appeal site.

4.3. Pre-application Consultation

4.3.1. The Planning Authority refer to an initial pre-application consultation meeting between representatives of the applicant and the Planning Authority on the 28th day of July, 2022 (under DCC ref. LRD PAC no. 6015/22-S1) and a subsequent stage 2 meeting on the 22nd day of August, 2022 (under DCC ref. LRD PAC no. 6015/22-S2), in respect of a proposed development generally comprising 114 apartments and a dry cleaner’s facility. Copies of the record of these consultation meetings are included with the application details forwarded by the Planning Authority. Based on the records submitted, the main topics raised for discussion at these meetings included the following:

- sunlight, daylight and overshadowing considerations;

- open space strategy, tree protection measures and the treatment of the Jewish cemetery wall;
- potential visual impacts on the Jewish cemetery;
- car and cycle parking standards and management;
- drainage arrangements.

4.4. Planning Authority Opinion

4.4.1. In the Notice of LRD Opinion (under DCC ref. LRD6015/22-S2) dated the 23rd day of September, 2022, the Planning Authority states that they are of the opinion that the documents submitted require further consideration and amendment to constitute a reasonable basis for a LRD application under section 32D of the Act of 2000. In the opinion of the Planning Authority, an application for the proposed development should be accompanied by:

- a statement of response to the issues set out within the Planning Authority opinion;
- a statement of consistency with the Development Plan for the area.

4.4.2. Further justification and consideration was requested in the opinion of the Planning Authority with respect to:

- design strategy, layout and height;
- future-proofing of non-residential units;
- preparation of a community audit and childcare analysis;
- residential standards, including lighting, storage, outlook and overlooking;
- conservation of architectural features, including treatment of the Jewish cemetery wall, the historical urban grain to nos.61 and 63 and the alignment of the bookend building;
- open space, landscape and biodiversity, including trees;
- traffic and transportation, including the extent of works to the public road, swept-path analysis, setdown spaces, cycle parking, mobility management and car park management strategy;

- archaeology, including the assessment of impacts;
- surface water management;
- consent required if works are proposed to a boundary wall that is not in the applicant's ownership.

4.5. Applicant's Response to Opinion

- 4.5.1. The subject application included a response to the Planning Authority's pre-application consultation opinion in a report titled 'Statement of Response to Opinion of Dublin City Council'. This Statement outlines how the application is considered to comply with the respective requirements listed in the Planning Authority's opinion, including design strategy, residential amenity, conservation, traffic and transportation, open space, landscape and biodiversity, archaeology and drainage. The applicant concludes that the documentation provided with the application, including the amendments to the proposals, addresses the opinion of the Planning Authority.

5.0 Planning Authority Decision

5.1. Decision

- 5.1.1. The Planning Authority decided to grant planning permission for the proposed development subject to 32 conditions, the following of which are of note:

Condition 4 – restriction of use to gym and café units;

Condition 10 – amalgamate units 4B-B-04 and 3B-B-03 with recessed frontage to provide secondary aspect to be repeated for the eight single-aspect units directly above;

Condition 11 – conservation work methods;

Condition 12 – measures to address overlooking / privacy, including opaque glazing to balconies, vertical screens, treatment of windows in block B and C within 11m of neighbouring gardens or 22m of an opposing habitable room and defensible space along block B;

Condition 17a) – surface-level vehicular access from Esmond Avenue only;

Condition 21 – external lighting to standards in the ILPs Guidance Notes for the Reduction of Obtrusive Light GN01:2020.

5.2. Planning Authority Reports

5.2.1. Planning Reports

The recommendation within the report of the Planning Officer (December 2022) reflects the decision of the Planning Authority and can be summarised as follows:

Principle and Density

- the proposed development is consistent with the zoning objectives for the site as contained in the Dublin City Development Plan 2016-2022, given that residential development is permitted in principle under Z1, Z2 and Z10 zonings, retail is permitted in principle under Z1 zonings, café (restaurant) is permitted under Z10 zonings and gym use (cultural/recreational building) is permitted under Z1 and Z10 zonings;
- this brownfield, infill site is suitable for increased densities based on the Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities (2009) (hereinafter the ‘Sustainable Residential Development Guidelines’), strategic planning policy supporting efficient use of urban land, the provisions sought under the previous non-statutory Richmond Road Action Area Plan and recently permitted neighbouring infill six-storey apartment schemes on Richmond Avenue to the west of the site featuring densities of 308 units per hectare (DCC ref. 3483/22) and 317 units per hectare (DCC ref. 3295/21);
- plot ratio would comply with Development Plan provisions and the site coverage would exceed the indicative recommended standard allowed for on Z2 and Z10 zoned lands, although only a very limited Z2 area forms part of the site;
- the proposed Part V social housing provision is noted;
- the nature and scale of the proposed development would be consistent with the provisions of the Development Plan;

Layout and Design

- the joined-up, as opposed to piecemeal development approach, maintaining of the semi-detached houses, provision of a public plaza fronting the development, contemporary architectural composition of the materials and surveillance of public areas, are to be welcomed;
- the frontage to the development would screen much of the backland development from the public realm;
- the 'bookend' building on the west side of the semi-detached houses does not follow the existing pattern, but is a reasonable compromise considering what it would replace;
- proposals continue the inner-city finer grain layouts of neighbouring apartment schemes;
- permeability and connectivity across the site, as well as access to basements is noted;
- proposed block C elevation onto Esmond Avenue should be finished uniformly with brick and the render to the west side of block A should be replaced with brick;

Building Height

- restrictive building height limits do not apply in the draft Development Plan 2022-2028;
- block B measuring up to 18.1m would exceed the 16m restriction applying to development in the outer-city, although the inner-city Z10 zoning of the site suggests a more intense form of development to be intended for these lands;
- the step up in building heights along the Richmond Gardens and Fairview Close side would not be overly dramatic;
- given the height of existing buildings to be removed along the northern and eastern boundaries and the stepped building approach, there would only be a net neutral impact on the immediate residential properties;
- precedent for the six-storey building heights is provided by the permissions under DCC refs. 3483/22 and 3295/21 at Richmond Avenue;

- telecommunications, bird-flights paths, micro-climate and aviation would not be significantly affected by the proposed building heights;

Conservation

- inclusion of nos.61 and 63 Fairview Strand in the National Inventory of Architectural Heritage (NIAH) under refs. 50120061 and 50120062 is noted, as well as inclusion of no.65, the Jewish burial ground, and no.67, the burial ground gate lodge, railings and gate, in the record of Protected Structures and the NIAH;
- comprehensive documentation has been submitted with the application, including an Archaeological and Architectural Heritage Impact Assessment;
- blue Bangor slates should be used, and specific recommendations regarding the damp-proofing system, including avoidance of tanking systems, are set out for nos.61 and 63;
- boundary treatments to nos.61 and 63, treatment of the Jewish cemetery boundary wall and the bookend building are welcomed, although the openings on the west elevation to the bookend building should be revised to mitigate the visual impact on the cemetery;
- the site is in an area of archaeological interest for a recorded monument (ref.DU018-040) and consideration should be given to the protection and maintenance of the cemetery boundary wall, visual impacts and overshadowing of the cemetery and protection of mature trees;

Residential Amenities and Development Standards

- the proposed housing mix, proportion of two-bedroom, three-person apartments, the apartment floor areas, floor-to-ceiling heights, proportion of dual aspect apartments, and provision of private amenity space would meet or exceed the relevant standards within the New Apartment Guidelines;
- the ten north-facing, single-aspect units are noted to be overlooking a communal open space area with limited access to sunlight, raising concerns with respect to the amenities of these units and the need for the units to be amalgamated with other units in order to form dual aspect units;

- the nine apartments serviced by one lift / stair core circulation space would comply with the New Apartment Guidelines, but would fail to comply with standards in the Development Plan;
- waste management details and building life cycle proposals are noted;
- opaque glazing and vertical screens would be necessary to ensure adequate levels of privacy and security for the future apartment occupants;
- communal open space would be distributed throughout the site in small pockets with limited sunlight to the largest of these five spaces, although the proposals would be acceptable in this urban context;
- a natural buffer should be provided between the footpath between the communal space to Block B and the northern bedroom windows to unit 10B–B-04;
- the play area for children would occupy part of the communal open space;
- a childcare facility would not be necessary to serve a development of this size and nature, and the proposed development would generate population to support social and retail facilities;
- a contribution in lieu of the shortfall in public open space would be acceptable having regard to the limited functionality of the assigned area for same;
- access to sunlight and daylight is noted, including compensatory measures where shortfalls arise relative to the standards;

Neighbouring Residential Amenities

- measures to address potential overlooking are noted, including vertical brise soleil and high-side screen features, however, it is unclear how successful these would be, therefore, additional measures can be agreed at compliance stage, including opaque glazing, high screens or directional treatments;
- some level of overlooking would be acceptable as the proposed scheme in effect provides for a continuation in the fine-grained pattern of the existing adjoining apartment schemes to the west;
- a 1.8m-high screen should be fitted to the eastern parapet of the fourth-floor external communal space serving proposed block A;

- the scheme's impact on the access to daylight and sunlight on adjoining third-party properties, including the apartment schemes, fall within the tolerances of the best practice guidelines, although some additional shadow assessment would have been useful;

Traffic, Access and Parking

- taking-in-charge, access to services and public transport are noted;
- the pedestrian access with Fairview Close is noted and supported by the Development Plan provisions for enhanced permeability and previous planning decisions (DCC ref. 3897/15);
- a low level of car dependency is supported in sites proximate to the city centre and in areas served by high-frequency public transport, with the additional measures employed to address the quantum of parking noted, including two car-share spaces, a mobility management plan and cargo bike spaces;
- the quantum of bicycle parking is acceptable, however, a revised proposal for bicycle parking to serve block C would be necessary;
- clarification is required with respect to the demountable bollards restricting vehicular access only for emergency vehicles from Fairview Close, possibly incorporating a second set of demountable barriers to restrict vehicular access through the site during the maintenance of works;
- a Demolition and Construction Traffic Management Plan shall be submitted to agree details of construction phasing and programme, traffic management plan, hours of working, access arrangements and cleaning arrangements;

Natural Heritage

- the AA Screening Report and NIS are supported by an Ecological Impact Assessment and Bat Survey, while the NIS is also underpinned by an Outline CEMP;
- only feral pigeon were noted in a building on site during surveys;
- given the nature of the proposed demolition and site clearance works, the distance to the nearest watercourse (the River Tolka) and the potential dust and surface water runoff, out of an abundance of caution the applicant

considers the potential for significant effects on European sites cannot be excluded beyond reasonable scientific doubt;

- mitigation measures for construction works would be necessary, as presented in the Outline CEMP, and with implementation of these measures there would be no impacts on the integrity of neighbouring European sites;
- the project either alone or in combination with other plans or projects, in view of best scientific knowledge and in view of the sites' features and conservation objectives, will not adversely affect the integrity of European sites;
- an EIA of the project is not required before a grant of permission is considered.

5.3. Inter-Department Reports

- Archaeology, Conservation and Heritage (Archaeology Officer) – no objection, subject to conditions, according to Planning Officer's report;
- Archaeology, Conservation and Heritage (Conservation Officer) – grant permission, subject to conditions;
- Engineering Department (Drainage Division) – no objection, subject to conditions;
- Environmental Health Officer – no response;
- Transportation Planning Division – grant with conditions.

5.4. Prescribed Bodies

- Minister for Housing, Local Government and Heritage (Nature Conservation) – if mitigation measures with respect to the avoidance of mobilisation of pollutants from the site are implemented as set out, the proposed development would not result in any adverse effects on European sites and a condition requiring a CEMP should be submitted to the Planning Authority;
- Transport Infrastructure Ireland – no observations to make;
- Irish Water – no response;

- Irish Rail – no response;
- An Taisce – no response;
- The Heritage Council – no response.

5.5. Third-Party Submissions

5.5.1. According to the Planning Authority, a total of 20 third-party submissions were received by the Planning Authority during the consultation period for the application, the majority of which were submitted from residents and owners of properties in immediate areas, as well as a local-elected representative. The issues raised in these submissions can be collectively summarised as follows:

Development Principles

- non-compliance with Z1 zoning objectives to protect, provide and improve residential amenities;
- development out of character and scale with the surrounding context;
- excessive density, bulk and scale of the development on an irregular shaped site;
- imposing and overbearing appearance;
- excessive building heights, as well as height-to-width, building-to-street ratio along Esmond Avenue;
- impact of the bookend building on no.63 Fairview Strand;
- failure to overcome previous reasons for refusal under DCC refs. 3992/20 and 4679/18;

Residential Development Standards

- poor quality living environment, including aspect and light to apartments, access to communal space, bin storage, outlook, lack of privacy with overlooking between apartments, absence of residents' amenity space and a children's play area only provided for block B;
- lighting, usability, safety and security concerns for the open space;
- clarity regarding waste management for block C needed;

- lack of conclusive findings in the Social Audit regarding childcare and school places;

Impacts on neighbouring amenities

- loss of privacy and excessive overlooking with insufficient measures to address same;
- loss of light;
- noise disturbance from external terrace space;
- nuisance, air pollution and disturbance during construction;
- anti-social behaviour arising from access via Fairview Close;
- the Rotary building should not be used to facilitate the scale of the proposals;
- general compliance with lighting standards should not be considered sufficient, where adverse effects would arise;
- absence of shadow studies and comprehensive light impact assessments for Turlough Gardens and Philipsburg Avenue;
- absence of dust and noise studies with the application;

Traffic, Access and Parking

- insufficient quantum of car parking, resulting in overspill parking and blocking of access roads;
- limited width to Esmond Avenue resulting in traffic safety concerns and further congestion;
- increased traffic through Fairview Close with alternative scope for emergency access available;
- restriction of access along Esmond Avenue;
- limited details in the Design Manual for Urban Roads and Streets (DMURS) Statement;
- unrealistic mobility management plan measures;
- limited setdown spaces for service vehicles;

- lift access to bicycle parking;

Other Matters

- sufficient rights of way do not exist over Fairview Close;
- a retail unit would not be viable in this location;
- difficulty in constructing and maintaining a development along the boundaries, including security implications;
- site notice incorrectly describes the site location and inaccuracies in the application documentation references;
- devaluation of local property;
- thorough on-site investigations are needed for the AA Screening Report and NIS.

6.0 Planning Policy

6.1. National Planning Policy

Project Ireland 2040 - National Planning Framework

- 6.1.1. Project Ireland 2040 links planning and investment in Ireland through the National Planning Framework (NPF) and a ten-year National Development Plan (NDP). The NPF encapsulates the Government's high-level strategic plan for shaping the future growth and development of Ireland to the year 2040, and within this framework Dublin is identified as one of five cities to support significant population and employment growth. The NPF supports the requirement set out in the Government's strategy for 'Rebuilding Ireland: Action Plan for Housing and Homelessness (2016)', in order to ensure the provision of a social and affordable supply of housing in appropriate locations.
- 6.1.2. National policy objectives (NPOs) for people, homes and communities are set out under chapter 6 of the NPF. NPO 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Other NPOs of relevance to this appeal include NPOs 3(a) (40% of homes in existing settlement footprints), 3(b) (50% of new homes in the

five largest cities, including Dublin), 4 (attractive, liveable and well-designed urban places), 13 (development standards), 27 (transport alternatives) and 35 (increased densities) all relating to densification and compact urban growth.

Ministerial and Other Guidelines

6.1.3. In consideration of the nature and scale of the proposed development, the receiving environment and the site context, as well as the documentation on file, including the submissions from the Planning Authority and other parties addressed below, I am satisfied that the directly relevant Section 28 Ministerial Guidelines, including revisions to same, comprise:

- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2022);
- Regulation of Commercial Institutional Investment in Housing - Guidelines for Planning Authorities (2021);
- Design Manual for Urban Roads and Streets (DMURS) (2019);
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018);
- Architectural Heritage Protection Guidelines for Planning Authorities (2011);
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009);
- The Planning System and Flood Risk Management - Guidelines for Planning Authorities, including the associated Technical Appendices (2009);
- Childcare Facilities – Guidelines for Planning Authorities (2001).

6.1.4. The following planning guidance and strategy documents are also considered relevant:

- Climate Action Plan (2023);
- Places for People – National Policy on Architecture (2022);
- Housing for All – A New Housing Plan for Ireland (2021);
- Water Services Guidelines for Planning Authorities – Draft (2018);

- Part V of the Planning and Development Act 2000 - Guidelines (2017);
- National Biodiversity Action Plan 2017-2021;
- Road Safety Audits (2017);
- Rebuilding Ireland - Action Plan for Housing and Homelessness (2016);
- Traffic and Transport Assessment Guidelines (2014);
- Building Research Establishment (BRE) 209 Guide - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice, (Paul J. Littlefair, 2nd Edition 2011);
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (2009);
- Smarter Travel – A Sustainable Transport Future. A New Transport Policy for Ireland 2009 – 2020 (Department of Transport, 2009);
- British Standard (BS) 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting (2008);
- Best Practice Guidelines for Delivering Homes, Sustaining Communities – Quality Housing for Sustainable Communities (2007);
- Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development (2003);
- Greater Dublin Regional Code of Practice for Drainage Works (Version 6.0);
- Framework and Principles for the Protection of the Archaeological Heritage (1999).

6.2. Regional Planning Policy

- 6.2.1. The ‘Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy (RSES) 2019-2031’ supports the implementation of Project Ireland 2040 and the economic and climate policies of the Government, by providing a long-term strategic planning and economic framework for the region. The following regional policy objective (RPO) of the RSES is considered relevant to this appeal:

- RPO 3.2 – in promoting compact urban growth, a target of at least 50% of all new homes should be built within or contiguous to the existing built-up area of Dublin city and its suburbs, while a target of at least 30% is required for other urban areas.

6.2.2. According to the RSES, the site lies within the Dublin metropolitan area, where it is intended to deliver sustainable growth through the Dublin Metropolitan Area Strategic Plan (MASP) to ensure a steady supply of serviced development land. Key principles of the MASP include compact sustainable growth and accelerated housing delivery, integrated transport and land use, and the alignment of growth with enabling infrastructure.

6.3. Local Planning Policy

Dublin City Development Plan 2022-2028

- 6.3.1. The area of the appeal site fronting onto Fairview Strand and along the east side of Esmond Avenue has a zoning objective referred to within the maps accompanying the Dublin City Development Plan 2022-2028, as 'Z1 – Sustainable Residential Neighbourhoods'. According to the Development Plan, this 'Z1' zoning has a stated objective 'to protect, provide and improve residential amenities'. The appeal site area on the west side of Esmond Avenue and to the rear of Fairview Strand features a land-use zoning objective 'Z10 - Inner Suburban and Inner City Sustainable Mixed-Uses' with a stated objective in the Development Plan 'to consolidate and facilitate the development of inner-city and inner-suburban sites for mixed uses'. Two small portions of the site to the rear of nos.19 and 25 Philipsburgh Avenue have a land-use zoning 'Z2 - Residential Neighbourhoods (Conservation Areas)', featuring a stated objective 'to protect and/or improve the amenities of residential conservation areas'.
- 6.3.2. Chapter 11 of the Development Plan provides guidance relating to the built heritage and archaeology, including policy BHA2, which seeks to conserve and enhance Protected Structures and their curtilage and policy BHA26, which seeks to protect and preserve monuments and places in the Record of Monuments and Places (RMP), including preservation of known burial grounds and disused historic graveyards. Where disturbance of ancient or historic human remains is unavoidable,

they will be excavated according to best archaeological practice and reburied or permanently curated.

- 6.3.3. Under housing policy QHSN2 of the Development Plan, the Planning Authority will have regard to various Ministerial Guidelines, a number of which are listed in Section 6.1 above. Policy QHSN10 of the Development Plan promotes sustainable densities with due consideration for design standards and the surrounding character. Further guidance regarding urban density is set out in Development Plan appendix 3 - Achieving Sustainable Compact Growth: Policy for Density and Building Height in the City. Indicative plot ratios and site coverage percentages are listed in table 2 of appendix 3. The Development Plan includes a host of policies addressing and promoting apartment developments, including policies QHSN36, QHSN37, QHSN38 and QHSN39.
- 6.3.4. Policies SC15 to SC17 inclusive in section 4.5.4 to the Development Plan, set out the Planning Authority's strategy and criteria when considering appropriate building heights, including reference to the performance-based criteria contained in the aforementioned appendix 3 to the Development Plan. Other relevant sections of the Development Plan include the following:
- Section 4.5.2 - Approach to the Inner Suburbs and Outer City as Part of the Metropolitan Area (policy SC8);
 - Section 4.5.3 – Urban Density (policies SC10, SC11, SC12 and SC13);
 - Section 4.5.9 – Urban Design & Architecture (policies SC19, SC20, SC21, SC22 and SC23);
 - Section 8.5.1 - Addressing Climate Change through Sustainable Mobility;
 - Section 9.5.1 – Water Supply and Wastewater;
 - Section 9.5.4 – Surface Water Management and Sustainable Drainage Systems (SuDS);
 - Section 15.4 – Key Design Principles;
 - Section 15.5 – Site Characteristics and Design Parameters;
 - Section 15.8 - Residential Development;
 - Section 15.9 – Apartment Standards.

7.0 The Appeals

7.1. Grounds of Appeal – First Party

7.1.1. A first-party appeal has been lodged only against condition nos.12(a), 14(a) and (c), 15(b), 16(e), 17(b)(ii) and 17(g) attached to the Planning Authority's notification of a decision to grant planning permission for the proposed development. The following grounds of appeal are raised:

- condition no.12(a)(i) - the necessity for blue Bangor slates is unnecessarily restrictive and overly onerous owing to the limited scope to acquire this slate, as the condition would not allow for other slate to be sourced and as the subject buildings are not Protected Structures;
- condition no.12(a)(ii) – should be reworded as the method of damp treatment suggested by the Planning Authority may not be appropriate owing to the lower-ground floor / basements to the subject houses that are exceptionally damp;
- condition no.12(a)(iii) – the elevational treatment of no.63 went through numerous iterations and the finalised approach, including overlooking of a burial ground, would not be a negative impact, as is evidenced by the Huguenot cemetery on Merrion Row;
- condition no.14(a) and (c) – the word 'opaque' should be replaced with the phrase 'translucent with limited transparency', as opaque may be interpreted as a material that does not let light through;
- condition no.15(b) – the overall requirement for a contribution in lieu of a shortfall in public open space is not contested, however, this should account for the provision of 204sq.m of public open space on site forming 40% of the open space requirement;
- condition no.16(e) – the condition should be reworded to specifically refer to the provisions of section 34(4)(m) of the Act of 2000 referring to the cost of additional works to the cemetery wall to be paid for by the Planning Authority;
- condition no.17(b)(ii) – the condition should be reworded as the second set of demountable bollards may not be necessary;

- condition no.17(g) – the condition results in a considerable level of uncertainty and an alternative wording should be used allowing for the developer to carry out the works or attach a requirement for a default in agreement of costs to be determined by the Board.

7.2. Grounds of Appeal – Third Parties

7.2.1. The third-party grounds of appeal from residents of no.55 Fairview Strand and a group of neighbouring residents from the Turlough Gardens and Philipsburgh Avenue area, were accompanied by extracts from the planning application and photographs of the area, can be collectively summarised as follows:

Development Principles

- proposals feature maximisation of density resulting in overdevelopment of the site;
- the site context is of historical significance;
- reliance cannot be placed on the existing structures as a baseline scenario, where these structures do not have planning permission;
- the previously permitted block under DCC ref. 3291/07 does not provide justification for the height and scale of proposed block A;
- it is misguided for the permissions under DCC ref. 3483/22 at 9/9a Richmond Avenue and DCC ref. 3295/21 at 15 Richmond Avenue to be considered as providing precedent for the density of the subject scheme;

Urban Design and Building Height

- proposals would be out of character with the surrounding area;
- excessive building heights are proposed for each block, and these heights do not adequately reconcile with the four-storey blocks to the west and the housing along the boundaries of the site;
- it is difficult to appreciate how this proposed development could be permitted when recent permissions were refused for more modest developments on the site (DCC ref. 4679/18) and on the neighbouring Player's Lounge premises (DCC ref. 3992/20), due to overdevelopment of the sites and the potential

impacts on the area, including the amenities of local residents. Updated planning policy guidance would not justify overcoming these previous reasons for refusal;

- it is noted that planning permission for a two to three-storey development was previously refused for the northeast portion of the appeal site (ABP ref. PL29N.233610 / DCC ref. 3939/08);
- failure of the proposals to adhere to the principle of sustainable development, to protect existing residential amenities or to integrate with the character of the surrounding area;
- proposed block B would tower over neighbouring two-storey houses;
- buildings should not be constructed directly onto the boundary with Philipsburgh Avenue and the service lane to Turlough Gardens, given the security and access issues that would arise;
- the northern elevation of proposed block C should not features any openings, including for ventilation;
- the development would be visible from Fairview Strand and Esmond Avenue;
- building heights should drop down from four storeys on the west side to three-storey mews buildings or townhouses onto the laneway;

Impacts on Residential Amenities

- minimal consideration for neighbouring residents;
- shortcomings in the assessment of the impacts on sunlight and daylight, arising from an absence of shadow study diagrams, the absence of an assessment of overshadowing and lighting to all windows in Turlough Gardens and Philipsburgh Avenue and an absence of assessment of the impacts of proposed blocks A and B on Turlough Gardens and lighting to nos.29, 31, 33, 35 and 37 Philipsburgh Avenue;
- general compliance with sunlight and daylight standards is an inadequately low bar to reach when concluding on the impact of the proposed development on neighbouring properties;

- proposed block C would result in the already small back gardens adjacent to the site to be overshadowed in afternoons and evenings, and it would significantly impact on daylight to habitable rooms;
- lack of privacy for neighbouring residents, with balconies, windows and terraces overlooking gardens and houses, in particular those at nos.3 to 19 Turlough Gardens and nos. 51 to 57 Fairview Strand;
- mitigation measures, such as opaque glazing and screens, as suggested by the Planning Authority, would only serve to address the amenities of residents of the proposed apartments;
- the development would be excessively overbearing and have an imposing appearance when viewed from neighbouring properties;

Traffic, Access and Parking

- proposals would exacerbate existing problems with respect to traffic congestion and parking in the area;
- increased traffic on neighbouring roads;
- need to maintain unobstructed access along Esmond Avenue;
- inadequate car parking provision, resulting in overspill parking to neighbouring streets;
- queries regarding parking for all residents, commercial units and visitors;

Other Matters

- inaccuracies in the application relating to the building height dimensions along Turlough Gardens, misleading parties to the application;
- safety and security concerns for existing residents.

7.3. Observations

7.3.1. None received.

7.4. Planning Authority Response

- 7.4.1. The Planning Authority's response to the grounds of appeal requests that the Board uphold the decision to grant planning permission and that if permission is to be granted for the proposed large-scale residential development, conditions should be attached with respect to general development contributions, a bond, a contribution in lieu of open space, social housing and a naming and numbering scheme.

7.5. First-Party Response to Third-Party Appeals

- 7.5.1. The first party has responded to the third-party appellants' grounds of appeal, with their submission accompanied by appendices, comprising a report addressing consistency of the proposals with the Dublin City Development Plan 2022-2028, a response from the project engineers addressing traffic, access and car parking, and an addendum report with respect to sunlight, daylight and shadow assessment. The response submission can be summarised as follows:

Development Principles

- previous refusals of planning permission need to be viewed in the context of recent Government and regional planning policy with respect to building heights and density;
- the proposals need to be considered in the context of the apartment complex developments at Fairview Close and Richmond Gardens, and the previous permission for development on the appeal site (DCC ref. 3291/07);
- consistency with Dublin City Development Plan 2022-2028 is detailed in an addendum to the response submission, including the net density proposed which would be 220 units per hectare when excluding Esmond Avenue;

Urban Design and Building Height

- there would be limited impact on the streetscape along Fairview Strand and the Esmond Avenue streetscape would be enhanced and animated;
- introducing new links, population and services to the area via the proposed development, would greatly outweigh the present situation featuring an unfinished development and outdated industrial structures;

- building heights would be appropriate, including the stepped arrangements, based on the information presented in the application documentation, the report of the Planning Authority, local planning policy and Government guidance;

Impacts on Residential Amenities

- a comprehensive sunlight, daylight and shadow analysis document has been submitted with the application, and the third-party appellants' assertions are further rebuked in an addendum report to the response submission, including the impacts on residences at nos.55 and 57 Fairview Strand;
- it is not possible to step up residential density and scale without there being some impact on amenities, however, some level of overlooking gardens and properties would be typical in urban situations;
- access to roof level would only be available to terrace areas and there would be no windows on the northern elevation of proposed blocks B and C;
- the complex planning history relating to nos.55 and 57 Fairview Strand initially led the first-party appellant to consider these properties to be in commercial use;
- it is reasonable to expect that development similar in scale to the apartment block (F) previously permitted under DCC ref. 3291/07 would be expected to occur on the part of the site proposed to accommodate block A, albeit with an additional floor to the proposed apartment block;
- screening, separation distances and the conditions proposed by the Planning Authority would address overlooking concerns;
- densification of urban, infill, brownfield sites is supported by planning policy and the information presented, including photomontages reveal that overbearing impacts would not arise;

Traffic, Access and Parking

- based on the proportional impact of the development on traffic and the Traffic and Transport Assessment Guidelines (2014), only the junction of Fairview

Close with Richmond Avenue requires detailed assessment, and the impact on traffic would be negligible at surrounding junctions;

- access to the laneway along Turlough Gardens would be maintained, despite the limited use of this laneway for parking of cars;
- Esmond Avenue is a lightly-trafficked, public road and a construction traffic management plan will be agreed with the Planning Authority;
- the proposed provision of car parking would comply with the approach set out in the New Apartment Guidelines allowing for reduced parking in locations such as this;

Other Matters

- inaccuracies in the public notices and drawing height references do not arise, with the height dimensions relating to ordnance datum (OD);
- construction of block C directly onto the boundary with the laneway to the rear of Turlough Gardens would not be any different to other inner-urban sites;
- the introduction of a residential scheme to this location would increase the security of the area with enhanced public lighting provided.

7.6. Further Submissions

- 7.6.1. Following consultation by An Bord Pleanála with parties to the appeals, no further submissions were received.

7.7. Oral Hearing Request

- 7.7.1. Both of the third-party appeals received from Ciarán Lawlor & Alana Lawlor, and Pauline Murnin and others, requested that an oral hearing be held in respect of this appeal. Having regard to the circumstances of this case, to the issues raised in the submissions received by the Planning Authority and An Bord Pleanála, including the submissions from the third-party appellants addressing in detail the asserted impacts of the proposed development, I am satisfied that there is sufficient information available on the file to reach a conclusion on all matters arising. I do not consider,

therefore, that there is a compelling case for the holding of an oral hearing in this case.

8.0 Assessment

8.1. Introduction

8.1.1. This assessment considers the proposed development in the context of the statutory plan for the area, as well as national policy, regional policy and relevant guidelines, including section 28 guidelines. I have reviewed the application and appeal documentation, I am aware of the planning provisions relating to the site and the proposed development and I am satisfied that the substantive planning issues arising from the appeals submitted for this assessment can be addressed under the following headings:

- Land-use Zoning Objectives;
- Density;
- Building Heights;
- Impacts on Built Heritage;
- Impacts on Neighbouring Amenities;
- Residential Amenities and Development Standards;
- Access, Parking and Traffic.

8.1.2. The Planning Authority has concluded that the proposed development would come within the statutory definition of a 'large-scale residential development', based on the interpretation in section 2 of the Act of 2000, which includes the development of 100 or more houses where the floorspace of the houses would comprise greater than 70% of the overall floorspace. The buildings to be demolished would not provide functional floorspace within the overall development and the basement areas would primarily serve as ancillary residential floorspace, including parking areas. I am satisfied that based on information provided as part of the application, including proposals featuring 114 housing units and approximately 3% non-residential floorspace, evidence contrary to this conclusion has not been presented to me.

8.2. Land-use Zoning Objectives

- 8.2.1. The decision of the Planning Authority issued on the 13th day of December, 2022, and Dublin City Development Plan 2022-2028 came into effect on the 14th day of December, 2022. Consequently, it was possible for parties to the application to address matters raised in the new Development Plan as part of their submissions to the Board. As part of their response to third-party appeals, the first-party appellant has asserted that the proposals would be consistent with the provisions of Dublin City Development Plan 2022-2028. It is the Dublin City Development Plan 2022-2028 that is referred to below when referring to the 'Development Plan'.
- 8.2.2. In section 6.3 above, the specific land-use zonings relating to this site are set out. Within the Development Plan it is stated that residential and local retail uses are permissible on Z1 zoned lands and that residential, recreational and café (restaurant) uses are permissible on Z10 zoned lands. Residential use is also permissible on Z2 zoned land and a laundromat is 'open for consideration' on Z1 zoned lands. An open for consideration use is one that may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area. I am satisfied that a laundromat can also be referenced as a launderette, which are referenced alongside a 'dry cleaners' in the Planning and Development Regulations 2001, as revised (hereinafter the Planning Regulations), when referring to 'shops'. Accordingly, it would appear that there is an initial presumption allowing for the proposed uses on the subject lands.
- 8.2.3. Section 14.7.10 of the Development Plan sets out the purpose of the Z10 zoned land, outlining that this zoning supports mixed uses and the avoidance of a single use for a site, with a requirement for a range of 30% to 70% of a site area to be allocated to one particular use. Flexibility with regards to this use range is provided for with respect to sites of less than 0.5ha. The Z10 zoning applies to the northern end of proposed block A and all of proposed block B, amounting to approximately 0.27ha, therefore some flexibility should be applied. This Z10 zoned part of the appeal site would feature a local shop unit and part of the proposed gym facility,

although the majority of the area would be occupied by residential use.

Notwithstanding the adjoining apartment complexes, given the extensive commercial and industrial areas west of the site that also feature this Z10 zoning objective, it could not be reasonably concluded that an overconcentration of residential uses would arise in this area consequent to the proposed development.

- 8.2.4. Changes to the Z10 (Inner Suburban and Inner City Sustainable Mixed-Uses) zoning objective in the Development Plan include the application of a new requirement that a masterplan be prepared in respect of development of these lands in certain locations and for sites of greater than 0.5ha. Policy SC17 of the Development Plan, also requires a masterplan in accordance with criteria for assessment set out in appendix 3 to the Development Plan for any site over 0.5ha where proposals feature an enhanced scale and height. The criteria in appendix 3 refers to the need for a masterplan to provide a vision for the development of the entire site area. The first-party appellant has provided detailed proposals in their application for the entire area within the redline boundary of the site, including landscaping details.
- 8.2.5. In both new and established residential areas assigned a Z1 zoning, a range of uses that have the potential to foster the development of new residential communities is supported. The general objective for Z2 lands, encapsulating a very small area of the appeal site, is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. Such matters are considered further below.
- 8.2.6. In conclusion, I am satisfied that a reasonable mix has been presented relative to the zoning objectives for the site, and the proposed development could not be considered to materially contravene the land-use zoning objectives for the site, as contained in the Development Plan. Standard planning conditions with respect to social housing would apply and given the limited 18-month demolition and construction period envisaged for the development as stated in the Outline Construction Management Plan (CMP) submitted with the application, a condition with regard to phasing of the development would not appear necessary.

8.3. Density

- 8.3.1. Comprising 114 units on a net site area of 0.52ha, the proposed development would feature a density of 220 units per hectare, similar to the apartment complexes in Richmond Gardens and Fairview Close, although much higher than densities along Philipsburgh Avenue, Fairview Strand and Turlough Gardens. The first-party appellant considers the density of the development to be justifiable, based on the provisions of the Development Plan and the New Apartment Guidelines, and given that the site is within easy walking distance of a quality bus corridor and a Dart rail station, as well as the neighbouring provision of cycle and walking infrastructure.
- 8.3.2. The Planning Authority consider the density of the proposed development to be reasonable based on the brownfield nature of the site, recent permissions for high-density residential development along Richmond Avenue (DCC refs. 3483/22 and 3295/21), the context relative to public transport services, the provisions of the previous Development Plan 2016-2022 and Government policy in both the NPF and the Sustainable Residential Development Guidelines. The third-party appellants assert that the proposed development is not one that would be appropriate for these lands, as it would be excessive and the permissions under DCC refs. 3483/22 and 3295/21 should not be considered to provide precedent for the density of this scheme.

National Policy and Section 28 Guidelines

- 8.3.3. In terms of density and the national policy context, the NPF promotes the principle of 'compact growth' at appropriate locations, facilitated through well-designed, higher-density development. Of relevance are NPOs 13, 33 and 35 of the NPF, which prioritise the provision of new homes at increased densities through a range of measures including, amongst others, increased building heights. The NPF signals a shift in Government policy towards securing more compact and sustainable urban development within existing urban envelopes. It is recognised that a significant and sustained increase in housing output and apartment type development is necessary.
- 8.3.4. In relation to Section 28 guidance addressing housing density, the Urban Development and Building Heights Guidelines for Planning Authorities (2018) (hereinafter the 'Building Heights Guidelines') and the New Apartments Guidelines all provide further guidance in relation to appropriate densities and support increases

in densities at appropriate locations in order to ensure the efficient use of zoned and serviced land. All national planning policy indicates that increased densities and a more compact urban form is required within urban areas, subject to high qualitative standards being achieved in relation to design and layout.

- 8.3.5. The Building Heights Guidelines state that increased building height and density will have a critical role to play in addressing the delivery of more compact growth in urban areas and should not only be facilitated, but actively sought out and brought forward by our planning processes, in particular by Local Authorities and An Bord Pleanála. These Guidelines caution that due regard must be given to the locational context and to the availability of public transport services and other associated infrastructure required to underpin sustainable residential communities.
- 8.3.6. The New Apartment Guidelines note that increased housing supply must include a dramatic increase in the provision of apartment development to support ongoing population growth, a long-term move towards a smaller average household size, an ageing and more diverse population with greater labour mobility, and a higher proportion of households in the rented sector. The Guidelines address in detail suitable locations for increased densities by defining the types of locations in cities and towns that may be suitable, with a focus on the accessibility of the site by public transport and proximity to city/town/local centres or employment locations. Suitable locations stated in the Guidelines include ‘central and/or accessible urban locations’, ‘intermediate urban locations’ and ‘peripheral and/or less accessible urban locations’. The Guidelines also state that ‘the range of locations is not exhaustive and will require local assessment that further considers these and other relevant planning factors’.

Sustainable Residential Development Guidelines

- 8.3.7. The Sustainable Residential Development Guidelines set out where increased residential densities will generally be encouraged, including in city or town centres, on brownfield sites within city or town centres, along public transport corridors, on inner-suburban / infill sites, on institutional lands and on outer-suburban / greenfield sites. The first-party appellant highlights that the Guidelines refer to walking distances from public transport services as best guiding densities along public transport corridors with scope for increased densities in locations within 500m

walking distance of a bus stop or within 1km of a light rail stop or a rail station. Clontarf Road DART rail station would be within a 1km walk from the appeal site. The nearest public bus stops to the appeal site include stop no.4518 fronting the site along Fairview Strand and stop no.1484 on Philipsburgh Avenue. These bus stops are within a 500m easy walk of the appeal site and provide access to bus route 123 connecting with the city centre. BusConnects H-spine also operates from stops on Annesley Bridge Road within a 500m easy walk of the appeal site. The Guidelines refer to the capacity of public transport services requiring consideration with respect to appropriate densities, a matter that I specifically address below.

Regional Policy

- 8.3.8. In addressing the settlement strategy for Dublin city and its suburbs, the RSES supports the consolidation and re-intensification of infill/brownfield sites to provide high-density and people-intensive uses within the existing built-up area, and ensure that the development is co-ordinated with the delivery of key water and public transport infrastructure. This approach is reaffirmed within RPO 4.3 of the RSES. The RSES also refers to key national strategic outcomes in the NPF, followed through into the RSES, as targeting compact growth in urban areas.

Development Plan Policy

- 8.3.9. Appendix 3 to the Development Plan supports densities that comply with the Sustainable Residential Development Guidelines, while setting out net density ranges for residential developments based on their location within the city, including the city centre and canal belt, Strategic Development and Regeneration Areas (SDRAs), Strategic Development Zones (SDZs) and Local Area Plan lands, key urban villages, former Z6 zoned lands and the outer suburbs. The Development Plan refers to a presumption against schemes in excess of 300 units per hectare. In considering the appropriateness of densities for a site the Development Plan refers to the need to respect the character and amenities of an area, the need to consider access and capacity of public transport, the need for varied housing typologies and the need to create liveable places. These matters are addressed separately below when considering the various potential impacts of the development and the quality of urban design of the proposals.

- 8.3.10. The lands are not within the canal belt and I am not aware that the lands were previously zoned for Z6 (enterprise and employment purposes). Furthermore, the site is not within an area forming part of SDRA, SDZ, Local Area Plan or key urban village lands. The Development Plan refers to the 'outer city' as being those newly developing areas on the fringe of the city administrative area, including Clongriffin-Belmayne, Ashtown-Pelletstown, Park West and Cherry Orchard. The appeal site would not be in a newly developed area given the history of development in this area, as highlighted in the Archaeological and Architectural Heritage Impact Statement submitted with the application. It is unclear which location category the subject site would fall into, or indeed if the site would fall into any of the stated location categories.
- 8.3.11. The nature of the proposed development is that it would replace the existing primarily commercial use of the site with more intensive residential and related uses. Planning principles generally require development densities to reduce moving away from urban centres and public transport nodes. The characteristics of the immediate area incorporating a broad mix of uses and fine urban grain would be suggestive of an edge of city centre location. The Development Plan supports higher densities within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station in the city.

Access to Public Transport

- 8.3.12. In considering the general provision of public transport available in this area, I would note that the capacity of services is intrinsically linked to frequency, as inferred in section 5.8 of the Sustainable Residential Development Guidelines. The New Apartment Guidelines refer to high-frequency service as operating every ten minutes in peak periods, which would be the case at the neighbouring bus stops on Fairview Strand and Annesley Bridge Road based on the publically available bus timetables. The combined daily frequency of buses operating along the H-spine route is approximately one bus service every 8 minutes. The buses operating from the stops on Fairview Strand and Annesley Bridge Road all connect with the city centre, which enables high frequency links from the appeal site to other public transport modes.
- 8.3.13. Within their Traffic and Transport Assessment report, the first-party appellant has provided details of an assessment undertaken of the existing capacity of rail services

from the neighbouring DART station and for local bus services. The first-party appellant's assessment is asserted to indicate a maximum increase of 1% in the demand for public transport services operating in the area arising from the proposed development and based on the estimated peak hour capacity. It is therefore asserted by the first-party appellant that the existing public transport service capacity is sufficient to meet the demand arising from the proposed development. Technical assessments contradicting the appellant's capacity assessment have not been provided. I am satisfied that based on the existing rail and bus services operating in the area, the future occupants of the proposed development would be served by high-frequency and high-capacity public transport within easy walking distance of the site.

Location Category

- 8.3.14. On the basis of the proximity and accessibility criteria analysed above, the appeal site could be considered to fall into the category of a site located within a public transport corridor based on the Sustainable Residential Development Guidelines. Lands within public transport corridors are stated in the Sustainable Residential Development Guidelines to generally be suitable for minimum net residential densities of 50 units per hectare, subject to appropriate design and amenity standards, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes. The proposed development meets the minimum net density targets for this category of land. I am satisfied that the site can also be categorised as being within an 'accessible urban location' based on categories within the New Apartment Guidelines, and it is in a location that supports higher densities based on Development Plan provisions. Minimum and maximum residential densities are not set within the New Apartment Guidelines or the Development Plan for such locations.

Neighbouring Densities

- 8.3.15. The immediate areas to the north and west of the appeal site, including Turlough Gardens and Philipsburgh Avenue, are very much defined by low residential densities. In contrast, high residential densities are a feature of the apartment complexes immediately to the west of the site in Fairview Close and Richmond Gardens. I note that densities of 173 units per hectare were permitted for the

Fairview Close development (ABP ref. PL29N.207909) in 2004 (123 apartments on 0.71 hectares).

Density Conclusion

- 8.3.16. In conclusion, the proposed density for the appeal site complies with Government policy seeking to increase densities in appropriate locations and thereby deliver compact urban growth. The proposed development in this location would not contradict density standards contained in the Development Plan 2022-2028 or section 28 Guidelines, and the proposed density would not appear excessive for the site based on access to public transport and other neighbouring services. Certain criteria and safeguards must be met to ensure a high standard of design and I address these issues in my assessment below.

8.4. Building Heights

- 8.4.1. The third-party appellants assert that the proposed development would fail to integrate with the surrounding area, primarily as a result of the proposed building heights, which they consider to be excessive for this location. The Planning Authority do not raise particular concerns regarding the overall design of the proposed development, which they consider to be acceptable having regard to the established grain and pattern of development in the area.
- 8.4.2. The four warehouse-type buildings on site feature maximum heights of 3.1m to 7.5m, while the dry cleaner's premises features a maximum height of 4.2m. The two houses that would be maintained on site feature roof ridge heights of 10.3m, similar to the building heights along the adjacent terraces on Fairview Strand, Philipsburgh Avenue and Turlough Gardens. There are four to five-storey apartment blocks adjacent to the site in Fairview Close and Richmond Gardens. When measuring to roof parapet level, the highest element of the proposed development would comprise apartment block B, which would feature six storeys and would be approximately 18.2m in height. Each of the other blocks feature a variety of building heights ranging from five-storeys (approximately 15.5m) for block A and three-storeys (approximately 9.5m) for block C. Variations in building height profiles relative to ground levels and neighbouring buildings are illustrated on the various site section and elevation drawings submitted with the application. The proposed development

would not be substantially higher than existing buildings in the immediate area with a 2.1m difference between the highest part of block B and the neighbouring five-storey block in Richmond Gardens.

- 8.4.3. The Planning Authority consider the height of the proposed buildings to be acceptable having regard to the Z10 zoning of that part of the site intended to accommodate the higher buildings, the soft transition in building heights relative to neighbouring buildings, the existing buildings constructed onto the boundaries of the site and permissions for six-storey buildings on Richmond Avenue (DCC refs. 3483/22 and 3295/21). The proposed building heights and scale are asserted to be excessive by the third-party appellants, which they consider to be out of character with surrounding building heights and lacking an appropriate transition in scale relative to the immediate buildings in the area. The third-party appellants assert that it is difficult to appreciate how the proposed building heights could be considered to be acceptable based on refusal of planning permission for developments on a neighbouring site (DCC ref. 3992/20) and the subject appeal site (DCC ref. 4679/18 and ABP ref. PL29N.233610 / DCC ref. 3939/08), the reasons for refusal of which they do not consider to have been superseded by planning guidance in the interim.
- 8.4.4. The proposed development would differ from the previously refused development on the appeal site along the west side of Esmond Avenue (DCC ref. 4679/18), with road upgrade works now proposed to Esmond Avenue, nos.61 and 63 Fairview Strand proposed to be maintained, the dry cleaner's premises at no.59a Fairview Strand proposed to be removed, a reduced scale and depth to block A and an enclosed street façade on the northern end of Esmond Avenue.
- 8.4.5. National policy, including specific planning policy requirement (SPPR) 1 of the Building Heights Guidelines, describe the need to move away from blanket height restrictions and that increased building heights at accessible and serviced locations within the metropolitan area should be supported. I am satisfied that the site is reasonably-well located and serviced with options to access existing high-frequency, high-capacity public transport services, with links between modes, as well as increased access and connections available through more active modes of walking/cycling, and with an array of services and amenities within walking and cycling distance of the site.

- 8.4.6. Policy SC16 of the Development Plan recognises that Dublin city is fundamentally a low-rise city, but that there is scope for increased heights in locations, subject to compliance with performance criteria, principles and development standards, including those listed in appendix 3 to the Development Plan. The general principle is to support increased height and higher-density schemes in areas, such as those close to high frequency public transport, which I am satisfied that the subject site location would conform to.
- 8.4.7. Table 3 in appendix 3 to the Development Plan sets out 46 items to be considered under ten objectives for proposals for buildings that would be higher than those in the vicinity. The stated objectives refer to urban design principles such as promoting a sense of place and addressing the site context, as well as providing appropriate legibility, continuity, enclosure of spaces, connectivity, attractive spaces, mixed uses and activities and sustainable buildings.
- 8.4.8. With regard to the contribution of the development to place-making, the delivery of legible spaces and streets, I note that the development would feature the provision of a new link into Fairview Close with a view provided from Esmond Avenue to this new link. The mix of uses conforms to Development Plan provisions, would not conflict with neighbouring uses and given the existing nature of housing in the wider area, which is primarily dominated by family-size housing, albeit interspersed with apartments, further provision of apartments would add to the mix of housing in this area. The proposed works along Fairview Strand, including the repurposing of the two houses and the contemporary bookend building, would integrate well with the surrounding character and would make a positive contribution to place-making in this part of the city. The block arrangement would provide for passive surveillance of the public realm, open spaces and the pedestrian routes running through the site.
- 8.4.9. Block B would directly adjoin onto the gable end of an apartment block in Richmond Gardens and block C would be situated directly onto the rear laneway serving Turlough Gardens. Block A would feature a relatively consistent four-storey building height with setback penthouse level, while block B would initially stepping up from five storeys along Richmond Gardens with a six-storey element at the centre of the site, before stepping down from four to single storey along the rear boundary with Turlough Gardens service lane. Block C along the rear of Philipsburgh Terrace would feature a two-storey element onto the Turlough Gardens service lane and a

three-storey element flanking Esmond Avenue. I am satisfied that the massing approach undertaken in setting out the site would aid in creating a sense of place with buildings aligned to the main routes running through the development. The heights of the proposed buildings provide transition and variety in the development, as required in SPPR 4 of the Building Heights Guidelines. Excessively tall buildings are not proposed in the development relative to the existing buildings in the immediate area to the west.

- 8.4.10. The third-party appellants refer to elements of the development as being visible from Fairview Strand and Esmond Avenue, which would be an accurate statement, as has been illustrated in the computer-generated image included with the subject application drawings. I am satisfied that the images that appear to provide a reasonably accurate portrayal of the development alongside existing development, indicate that the massing of the development would not be excessively out of proportion with the buildings along Fairview Strand, including the two-houses to be refurbished, and the massing of the development would tie in with the immediate streetscape. The setback along Esmond Avenue, the stepping down of block B to the rear of the site and the 13m separation provided between blocks A and B would ensure that these structures would not appear monolithic where visible from Esmond Avenue and the immediate area.
- 8.4.11. In conclusion, I am satisfied that the proposed development would not contravene objectives, including performance criteria, outlined in the Development Plan with respect to building heights. The proposed development would make a positive contribution to the area and would respond well to the built environment in visual terms with sufficient capacity to absorb buildings at the height proposed. Notwithstanding this, the City Council advocates that when considering building height, regard must be had to the prevailing context within which the site is located and broader consideration must also be given to potential impacts such as overshadowing and overlooking. Further consideration with respect to the building height impacts on the visual and residential amenities of the area is undertaken below.

8.5. Impacts on Built Heritage

- 8.5.1. Nos.65 and 67 Fairview Strand adjoining to the west of the appeal site respectively comprising a Jewish burial ground and associated walls, and a lodge house with railings and entrance gate, are included in volume 4 of the Development Plan comprising the Council's Record of Protected Structures (RPS) (refs. 2736 and 2737). This burial ground is also identified in the Development Plan maps as a being in the RMPs, as established under section 12 of the National Monuments (Amendment) Act 1994, with the southern half of the appeal site within the zone of notification for this monument. Works are not proposed to the Protected Structures and there are no objections to the demolition of the commercial buildings on site presumably based on the limited architectural or historical significance of these structures.

Materials and Design

- 8.5.2. The proposed development would primarily feature extensive use of brick and glazing elements to the new building elevations, as well as zinc cladding. Render is proposed to sections of the western elevations to proposed blocks A and C and the Planning Authority has suggested conditions to omit this render finish and replace it with brick, which I note the first party has not contested. This would appear a reasonable request given the positions of these elevations overlooking the public realm, the Protected Structures and neighbouring residential developments, as well as the implications for this material to weather quite quickly and impact on the appearance of the development.
- 8.5.3. Condition no.12(a)(i) of the Planning Authority decision requires the applicant to confirm use of certain materials, including use of blue Bangor slates as the roofing material for the two houses along Fairview Strand that are proposed to be renovated. The grounds of the first-party appeal assert that the necessity for blue Bangor slates is unnecessarily restrictive and overly onerous owing to the limited scope to acquire this slate, as the condition would not allow for other slate to be sourced from elsewhere and as the buildings are not Protected Structures. The Planning Authority's reason for attaching condition no.12 to their notification of a decision to grant permission is stated as being 'in order to protect the original fabric, character

and integrity of the historic buildings and to ensure that the proposed works are carried out in accordance with best conservation practice’.

- 8.5.4. Within the Conservation Officer’s Report it is stated that the Archaeological and Architectural Heritage Impact Assessment submitted with the subject application notes that the roofs of the two houses are to be covered with natural slates and based on this the Conservation Officer assumes that blue Bangor slates would be utilised to match the existing blue Bangor slates. The submitted Archaeological and Architectural Heritage Impact Assessment states that the roofs are to be covered with natural slates, relaying original blue Bangor slates using aluminium copper or section bronze nails and providing additional slates, as necessary, to match the existing.
- 8.5.5. Section 15.4 of the Development Plan addressing ‘Key Design Principles’, expects new development to incorporate exemplary standards of high-quality, sustainable urban design and architecture, including use of high-quality materials and finishes. Key sustainable design principles to consider include use of sustainably-sourced materials or reuse of materials. The two subject houses feature double-pitched roofs and at present there are no slates on the front roof pitch. As noted the houses are not within an Architectural Conservation Area, nor are they Protected Structures, although they are included in the NIAH. Roofing materials for the majority of buildings along Fairview Strand primarily consist of slates, in varying condition, while there are also roofs featuring concrete tiles, corrugated-metal sheets and flat roofs concealed by parapets. There are other slate types similar to blue Bangor slates and the subject two houses would not direct adjoin other roofs along Fairview Strand. Consequently, I am satisfied that the use of blue Bangor slates or a similar slate, as had initially been set out by the first-party appellant in their application documentation, can be agreed with the Planning Authority as a condition of the permission to protect the original fabric, character and integrity of the subject buildings.

Damp Treatment

- 8.5.6. Condition no.12(a)(ii) of the Planning Authority decision requires the applicant to submit details of a revised methodology to address damp within the house structures, based on an assessment of the existing levels of damp / water ingress,

with preference to address damp by minimal intervention, retaining breathability and primary fabric. The grounds of the first-party appeal assert that the condition should be amended, as the method of damp treatment suggested by the Planning Authority may not be appropriate owing to the lower-ground floor / basements to the houses that are exceptionally damp. The Planning Authority's reason for attaching condition no.12 is stated as being 'in order to protect the original fabric, character and integrity of the historic buildings and to ensure that the proposed works are carried out in accordance with best conservation practice'. I accept that the buildings are of historic status owing to their inclusion in the NIAH, however, from a planning policy perspective, the works to address dampness and water ingress to these structures, which are not included in the RPS, would not necessarily require detailed agreement with the Planning Authority. Accordingly, I am satisfied that this part of the condition can be omitted in the event of a grant of planning permission for the proposed development.

Bookend Building Western Elevation

- 8.5.7. Condition no.12(a)(iii) of the Planning Authority decision requires the applicant to submit details prior to commencement of the development, revising the treatment of the openings on the west elevation of the proposed 'bookend building', potentially providing screening to additional openings, possibly incorporating a 'hit and miss' treatment to the openings. The grounds of the first-party appeal assert that the condition should be omitted, as the elevational treatment of the proposed bookend building went through numerous iterations and the finalised approach, including overlooking of a burial ground, is not considered to be a negative impact, as is evidenced by the Huguenot cemetery on Merrion Row. The Planning Authority's reason for attaching condition no.12 is stated above and their conservation report further states that this request is required to amend the openings to reduce the stark quality of the elevation, and as there is insufficient space between the bookend building and the cemetery boundary wall to accommodate screening/landscaping, which could mitigate the visual impact of the new building.
- 8.5.8. The bookend building would feature a three-storey western elevation finished with brick with ten windows and an opening to a recessed balcony overlooking the access laneway leading towards proposed apartment block A. The appearance of this proposed building from the cemetery grounds is best visualised using the

photomontages in the Verified Views report submitted with the subject application. The bookend building would feature a double-height dry cleaner's commercial premises at ground and first-floor level and a two-bedroom maisonette apartment at second-floor level. Only one window serving a habitable room in the western elevation of the maisonette apartment in the bookend building would overlook the cemetery. Although set slightly further back from the cemetery when compared with the bookend building, proposed block A would feature more habitable room windows overlooking the cemetery when compared with the bookend building. I fail to see the necessity to revise the elevation to the bookend building, and, in particular, how such a suggested revision would protect the original fabric, character and integrity of historic buildings or to ensure that the proposed works are carried out in accordance with best conservation practice. Accordingly, I am satisfied that condition no.12(a)(iii) of the Planning Authority decision should be omitted in the event that permission is granted for the proposed development.

Cemetery Boundary Wall

- 8.5.9. Condition no.16(e) of the Planning Authority decision requires the consultant archaeologist for the project to ensure the protection of the Jewish cemetery wall during the construction works as per the methodology provided in the report submitted with the application titled 'Photographic record, specification and methodology for the protection, partial reconstruction and repair of the existing historic east wall of the Jewish Cemetery between 63 and 65 Fairview Strand'. The grounds of the first-party appeal assert that the condition should be reworded to specifically refer to the provisions of section 34(4)(m) of the Act of 2000, thereby requiring the cost of additional works to the cemetery wall to be paid for by the Planning Authority. The Planning Authority's reason for attaching condition no.16 to their notification of a decision to grant permission is stated as being 'in the interest of preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of development'.
- 8.5.10. The treatment of the historic boundary wall between the appeal site and the cemetery arose during pre-application discussions when the Planning Authority confirmed that the cemetery wall is in the ownership of Dublin City Council, therefore, the applicant was requested to ensure that a comprehensive photographic and drawn survey was submitted to record the condition and materiality of the

boundary wall with a protection strategy developed to ensure the proposed works would not undermine or damage the boundary wall. The report titled 'Photographic record, specification and methodology for the protection, partial reconstruction and repair of the existing historic east wall of the Jewish Cemetery between 63 and 65 Fairview Strand' provides a methodology addressing works to the wall, as well as protecting the walls during construction, such as taking all precautions to protect the walls from collapse / damage during the works. The submitted Archaeological and Architectural Heritage Impact Assessment sets out that the developer would undertake protection measures as part of the construction works, but that no works are proposed to the boundary wall, which is understood to form part of the Protected Structure, and any works to the boundary wall would be subject of a separate planning application. A drawing (no.PL3101) of the boundary wall is included with the application.

- 8.5.11. Section 34(4)(m) of the Act of 2000 provides for the attachment of conditions to a planning permission 'requiring the provision of roads, including traffic-calming measures, open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities in excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the applicant with respect to the provision of those public facilities'. The Dublin City Council Development Contribution Scheme 2023-2026 includes the Jewish Cemetery in the list of parks, open spaces and recreation facilities to benefit from section 48 development contributions attached to planning permissions. I am satisfied that in order to avoid duplication in contributions, it is through the section 48 development contributions mechanism the cost of the works would be accounted for on a pro-rata basis by the Planning Authority.
- 8.5.12. There is potential for the repair and partial construction works listed by the first-party appellant in their Photographic record, specification and methodology to require planning permission given the fact that these are works to a Protected Structure. Further to this, the subject wall is not part of the appeal site or in control of the first-party appellant. The Planning Authority has not addressed this issue further as part of their response to the appeals. Based on the above, in my opinion it could only reasonably be the protection works outlined in the boundary wall methodology

document that are being referenced by the Planning Authority in condition no.16(e), therefore, I am satisfied that the requirements listed in condition no.16(e) should remain attached to a decision in the event of a permission arising, but the condition should be amended to clarify this is in only with respect to requiring the consultant archaeologist for the project to ensure the protection of the Jewish cemetery wall.

Conclusions

- 8.5.13. The removal of existing commercial structures, alongside the introduction of a contemporary apartment development would enhance the appearance of the area. Accordingly, I am satisfied that the proposed development would not result in a negative impact on the amenity or architectural quality of the area, including the Z2 residential conservation area that forms part of the site and adjoins the site.
- 8.5.14. With the attachment of conditions, including those relating to preservation of archaeology and Protected Structures, I am satisfied that the proposed development would not negatively impact on archaeology or the character or the setting of the Protected Structures adjoining the site and would not contravene policies BHA2 and BHA26 of the Development Plan, which seek to preserve the built heritage of the city, including the special interest of Protected Structures and the archaeology of burial grounds within the RMPs.

8.6. Impacts on Neighbouring Amenities

- 8.6.1. The third-party appellants assert that the proposals fail to integrate with the area and have minimal consideration in relation to the potential impacts on the amenities of neighbouring residents, as a result of overlooking, overshadowing and overbearing impacts, as well as the loss of light and privacy and increased disturbance. To address specific concerns with respect to the proposed development and neighbouring residential amenities, the Planning Authority decided to attach a number of planning conditions, several of which are contested by the first-party appellant, as addressed below.

Context

- 8.6.2. The nearest existing residential properties comprise the two-storey terraced houses along Turlough Gardens to the north, Philipsburgh Avenue to the east and Fairview

Strand to the south. There are also apartments within Richmond Gardens and Fairview Close to the west and northwest.

- 8.6.3. A single-storey element to block B closest to the rear of the site would be approximately 16m from the original rear elevation of housing in Turlough Gardens and 6m from the rear boundary of these houses across the service lane. The roof terrace with north-side screen to the three-storey element of block B would be approximately 22m from the original rear elevation of housing in Turlough Gardens. The roof parapet height to the three-storey element of block B would be 1.9m above the roof ridge height to the houses in Turlough Gardens. The third-party appellants contest the height dimensions referenced in the application drawings, which the first-party appellant clarifies to be in reference to ordnance datum levels, which would appear an accurate statement in my opinion.
- 8.6.4. The northern elevation to block C would be constructed onto the boundary with the rear service lane to Turlough Gardens, approximately 14m from the rear elevations of housing to the north. A single-storey element to block C closest to the eastern boundary of the site would be approximately 14m from the rear elevation of housing in Philipsburgh Avenue and 3.6m from the rear boundary of the nearest houses. The three-storey element to block C would be a minimum of approximately 16m from the nearest house with a proposed roof parapet level approximately a maximum of 1.5m above the roof ridge height of the adjacent houses.
- 8.6.5. The three-storey, south-side elevation to block C would be a minimum of 42m from the rear of houses along Fairview Strand and approximately 15m from the rear of these properties to the south. The roof parapet height to block C would be 2.3m above the roof ridge height to the buildings along Fairview Strand. Five to six-storey block A would be a minimum of 15m from the nearest garden serving houses along Fairview Strand. Block A would also be 7m from the side of the four-storey apartment block to the west in Fairview Close on a similar ground level. The roof parapet to proposed block A would be approximately 5.4m over the existing roof ridge height to no.55 Fairview Close and 2.5m above the existing roof parapet to the adjacent block to the west in Fairview Close. The proposed five-storey block B adjoining Richmond Gardens would be a stated 12.4m from the four-storey apartment block to the south in Fairview Close on a similar ground level and approximately 18m from the three-storey building in Richmond Gardens to the north,

which features a roof parapet height 5m below the roof parapet of the nearest five-storey element to proposed block B. Proposals would result in the loss of garden space to no.19 Philipsburgh Avenue, however, I am satisfied that sufficient rear amenity space amounting to approximately 60sq.m would remain for this house.

Overlooking and Loss of Privacy

- 8.6.6. The Planning Authority state that some overlooking would be acceptable in this urban context, as the proposals would provide for continuation of the fine-grained pattern of existing adjoining apartments to the west. The Planning Authority has suggested a number of measures to address overlooking, as stated in condition 14 to their decision, where they refer to use of opaque glazing to balconies, terraces and landing lights, the provision of high-level windows and screen heights 1.8m above finished-floor level, and undertaking other treatments to windows and terraces in blocks B and C. Notwithstanding the mitigation measures suggested by the Planning Authority, the third-party appellants assert that the proposed development would result in a lack of privacy for neighbouring residents, with balconies, windows and terraces overlooking gardens and houses. The first-party appellant's refers to viewing cone drawings (nos.1PL-6001 to 6003) to illustrate the extent of overlooking that would arise, as well as highlighting comparisons between the existing and proposed buildings on the appeal site.
- 8.6.7. In discussing standards for apartments, the Development Plan refers to the traditional standard separation distance requiring 22m between opposing first-floor windows and provisions for greater separation distances in taller blocks and reduced separation distances in certain situations, dependent on orientation and location. This standard can be used as a guide in assessing the adequacy of the proposals with respect to the potential for excessive direct overlooking between the upper levels to the proposed apartments and existing housing.
- 8.6.8. To address the potential for direct overlooking towards housing in Turlough Gardens, blocks B and C would be stepped away from the rear boundary with no windows at first-floor level directly opposing windows at a similar level in Turlough Gardens. I note that a number of these neighbouring houses have been extended to the rear, including single and first-floor extensions to no.15 and single-storey extensions to nos.3, 5, 7, 9 and 13. There are also shed structures on many of the rear

boundaries to houses in Turlough Gardens restricting views into the rear garden and yard areas. The nearest north-facing windows to Turlough Gardens in proposed block B and C would be between 10m to 13m from these properties and at second and first-floor levels respectively. The second-floor window to the north elevation of proposed block B would be at a high level and the roof terrace on this level and elevation would feature an opaque vertical screen facing Turlough Gardens. The windows or terraces on the northern elevation and above second-floor level in proposed block B would be over the 22m from Turlough Gardens. The first and second-floor windows and roof terraces on the northern side of block C would be a minimum of 22m from first-floor level of the closest adjacent houses to the north in Turlough Gardens.

- 8.6.9. All of the adjoining houses along Philipsburgh Avenue feature part-single and two-storey rear extensions. The proposed east-facing windows, balconies and terraces at first and second-floor level to block C would be a minimum of 9m to 16m from the rear boundary shared with the properties in Philipsburgh Avenue, with an additional 5m to 7m separation distance to the rear elevations of the extensions to these houses. No.23 Philipsburgh Avenue would appear to feature a rear extension the full depth of this property. The upper-floor windows and balconies to block C would incorporate opaque glazing, high-level windows and opaque vertical screens where shortfalls in the 22m separation distance between proposed and existing opposing windows would not be achieved.
- 8.6.10. Given the separation distances listed above, as well as the Development Plan provisions in this regard, and the two-storey building situated directly to the rear of no.17 Philipsburgh Avenue, I am satisfied that proposed block C would not provide for excessive direct overlooking or loss of privacy to the internal areas or the rear amenity spaces serving housing along Fairview Strand.
- 8.6.11. I accept that there would be some indirect views from the windows and balconies on the west and east elevations of block B, as well as the east elevation of block C, towards Turlough Gardens, but these views would not be direct and would be across intervening public and communal spaces with partial screening into many of the rear amenity spaces by virtue of existing shed structures constructed onto the rear service lane. I also accept that there would be some views from the windows and balconies on the east elevation of block A towards the rear amenity spaces serving

houses along Fairview Strand, however, this would be across the public roadway with partial screening into rear amenity space of no.55 by virtue of an existing structure to the rear of no.57.

- 8.6.12. Given the fact that the east-end elevation to the four-storey apartment block directly west of proposed block A does not feature apartment windows facing the proposed development, I am satisfied that proposed block A would not provide for excessive direct overlooking or loss of privacy for residents of the apartments in Fairview Close. The separation distance between the northern elevation to block B onto the communal space would be 18m from the rear of a neighbouring block to the north in Richmond Gardens, however, I do not consider this to present any worse a situation than that presently occurring between the existing apartment blocks in Richmond Gardens. The southern elevation to block B would be 10m from the northern elevation of an apartment block in Fairview Close, however, the intervening street would provide a visual distraction between the apartments and the arrangement would be typical for a fine-grained urban location, such as this.
- 8.6.13. The stepped block arrangements would generally position the highest elements of the proposed buildings furthest from the neighbouring residences avoiding windows and private amenity spaces in locations closest to neighbouring houses. The extent of overlooking that would arise from the proposed development would be limited, not excessive, typical for this urban context and not substantially different than the present situation. I am satisfied that the design of blocks A, B and C could not reasonably be considered to result in excessive direct overlooking into internal areas or loss of privacy for houses along Turlough Gardens, Philipsburgh Avenue and Fairview Strand, as well as apartments in Fairview Close and Richmond Gardens. The Planning Authority has stated additional conditions to further address the potential for overlooking, the principle of which the first-party appellant has not contested, and I am satisfied that these conditions can be attached in the event of a permission being granted for the proposed development.
- 8.6.14. Condition no.14(a) and (c) of the Planning Authority decision requires opaque glazing and vertical screens to be provided in certain locations to ensure adequate levels of privacy and security for future occupants of the proposed apartments. The first-party appellant has requested an amendment of this condition, by replacing 'opaque' with the phrase 'translucent with limited transparency', as they are

concerned that opaque may be interpreted as a material that does not let light through. In the planning application the first-party appellant refers to 'opaque' screens and windows in certain locations on the drawings. The recent Office of the Planning Regulator Practice Note PN03 setting out template conditions considered suitable for planning permissions, includes a condition to address residential amenity referring to 'glazing to all bathroom and en-suite windows shall be manufactured opaque or frosted glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.' There are numerous dictionary definitions for the word 'opaque', including 'not letting light through', 'not transparent', 'cloudy', 'blurred', however, in planning terms the common understanding is that opaque glazing simply restricts visibility and I don't believe it could to be misconstrued in urban planning to refer to the complete restriction of light. Accordingly, I do not consider it necessary to amend the condition.

Outlook and Overbearing Impacts

- 8.6.15. The proposed development would be visible from residences and commercial premises, including associated amenity areas serving neighbouring residences. Consequently, it would change the outlook from these neighbouring properties. The third-party appellants consider the proposed development to be excessively overbearing and having an imposing appearance when viewed from neighbouring properties, including block B, which is asserted to tower over the neighbouring two-storey houses. Having visited the area and reviewed the application and appeal documentation, including the photomontages and CGIs, I consider that the extent of visual change that would arise from those areas with views of the development, would not be substantive having regard to heights of the existing adjoining Richmond Gardens and Fairview Close development featuring a building 2.1m below the maximum height of the proposed buildings (block B).
- 8.6.16. Another key consideration is whether the height, scale and mass of the proposed development and its proximity to neighbouring properties is such that it would be visually overbearing where visible from neighbouring properties. The most sensitive neighbouring properties, including the potential building height differences and the minimum separation distances between existing and proposed buildings, are detailed above.

- 8.6.17. The subject application included comparative section drawings (nos.PL4001 to 4002) to illustrate how the first-party appellants considers views with the proposed development in place to be no worse than the present situation for selected houses along the north and east of the site. The CGIs (drawing nos.PL7501 to 7503) submitted provide a reasonably accurate portrayal of the appearance of the development. The application photomontages fail to provide an indication of the visual impact of the proposed development from short-range views close to houses in the immediate area. Views of the development would be very limited and not significant from the wider street network. Notwithstanding this, I am satisfied that the proposed development would not be overly prominent when viewed from the nearest houses, with an open outlook and sky view maintained for neighbouring residences. I note the existing buildings on site situated directly on the boundaries with adjoining residences, the height of the existing apartments blocks, the intervening space between the existing houses and the proposed apartment blocks and the stepped and modulated design of the proposed apartment blocks, which would ensure that where visible from neighbouring properties the proposed development would not be excessively overbearing.
- 8.6.18. The third-party appellants assert that the buildings should not be constructed directly onto the boundary with the service lane to Turlough Gardens and Philipsburgh Avenue and that the northern elevation to block C, which is proposed to be constructed on the boundary with the service lane, should not feature any openings, including for ventilation. At present there are buildings situated directly on the boundary with the rear service lane to Turlough Gardens and the rear boundary to the houses on Philipsburgh Avenue. With the exception of block C, the proposed buildings would be setback from the northern and eastern boundaries with the two storey houses. The two-storey northern elevation to proposed block C would be similar in height to the existing building in this location, with no windows proposed onto the laneway elevation. The northern elevation of block C onto the laneway would feature a red-brick finish and no overhanging elements and I am satisfied that its appearance would not be unduly overbearing for residents to the north and the installation of ventilation elements, if so required, would have negligible impacts on local amenities.

Impacts on Lighting - Sky and Sunlight

- 8.6.19. In assessing the potential impact on light access to neighbouring properties where the occupants would have a reasonable expectation of daylight, two primary considerations apply, including the potential for excessive loss of daylight and light from the sky into existing buildings through the main windows to living rooms, kitchens and bedrooms, and the potential for excessive overshadowing of existing external amenity spaces, including parks and gardens.
- 8.6.20. The third-party appellants refer to various asserted shortcomings with respect to the assessment of the impacts of the proposed development on sunlight and daylight to neighbouring properties, including those located on Turlough Gardens, Philipsburgh Avenue and Fairview Strand. The Planning Authority consider the scheme's impact on the access to daylight and sunlight on adjoining third-party properties to be within the tolerances set out in best practice guidelines in relation to same, although some additional shadow assessment would have been useful.
- 8.6.21. As required in the Development Plan, the application included a Sunlight, Daylight and Shadow Assessment report, which assesses the effect of the proposed development on the vertical sky component (VSC), the annual probable sunlight hours (APSH) and the winter probable sunlight hours (WPSH) to neighbouring residences, relying on the standards of the BRE 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'. This guide is referred to in the Development Plan and various Government guidelines for the assessment of the impacts of lighting by development in Ireland. In response to matters raised in third-party appeals, the first-party appellant provided an addendum report to address potential impacts on additional residences. The first-party appellant refers to various compensatory design measures undertaken and site constraints that they consider to enable the proposed development to be considered acceptable where recommendations of the BRE guide and BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting cannot be strictly complied with.
- 8.6.22. The BRE guidance on daylight is intended to be used in assessing daylighting to rooms in neighbouring houses, including living rooms, kitchens and bedrooms. When considering the impact on existing buildings, criteria is set out in figure 20 of the guidance, and this can be summarised as follows:

- if the separation distance is greater than three times the height of the proposed building above the centre of the main window, then the loss of light would be minimal. Should a lesser separation distance be proposed, further assessment would be required;
- if the proposed development subtends an angle greater than 25° to the horizontal when measured from the centre line of the lowest window to a main living room, then further assessment would be required;
- if the VSC would be greater than 27% for any main window, enough skylight should still be reaching this window and any reduction below this level should be kept to a minimum;
- if the VSC with the development in place is less than 0.8 of the previous value, occupants would notice a reduction in the amount of skylight;
- in the room impacted, should the area of the working plane that can see the sky be less than 0.8 the previous value, then daylighting is likely to be significantly affected. Where room layouts are known, the impact on daylight distribution in the existing building can be assessed.

8.6.23. The tests outlined above are a general guide only and the BRE 209 guidance states that they need to be applied flexibly and sensibly with figures and targets intended to aid designers in achieving maximum sunlight and daylight for residents and to mitigate the worst of the potential impacts for existing residents. It is clear that the guidance recognises that there may be situations where reasonable judgement and balance needs to be undertaken cognisant of circumstances. To this end, I have used the Guidance documents referred to in the Ministerial Guidelines to assist me in identifying where potential issues and impacts may arise and also to consider whether such potential impacts are reasonable, having regard to the need to provide new homes within the Dublin metropolitan area, the need for increased densities within zoned, serviced and accessible sites, and the need to address impacts on existing residents, as much as is reasonable and practical.

8.6.24. The existing baseline VSC for 100 windows on neighbouring properties was calculated and presented in the first-party appellant's report and addendum report, and the results were compared with the proposed development in place. I am satisfied that the subject application appears to have sufficiently modelled the

position of windows serving the neighbouring residences to enable a precise assessment of the impacts on lighting to a reasonable representative sample of neighbouring windows, rooms and residences that have greatest potential to be impacted by the proposed development.

- 8.6.25. Baseline VSC values for a large number of the tested windows in Richmond Gardens are estimated to be well already well below the recommended 27% VSC. With the exception of seven of the tested windows in Richmond Gardens and six of the tested windows in Fairview Strand, the estimated VSC values for all tested windows with the proposed development in place would be greater than a ratio of change of 0.8 of the existing value, which would comply with the minimum target value sought under the BRE 209. The seven windows in Richmond Gardens falling below the minimum VSC value have very low existing VSC values, possibly due to their positioning relative to overhanging balconies, and the first-party appellant asserts that the resultant ratio reductions would appear to be disproportionately large when compared with the actual skylight reduction. For the tested windows along Fairview Strand, it is only the windows in no.57 that would have a ratio of change to their VSC values with the proposed development in place below the recommended 0.8 ratio (0.72 and 0.77) when compared with their existing VSC values.
- 8.6.26. Based on the results presented highlighting that 87% of the tested windows would be within the recommended standards, which need to be applied flexibly and sensibly at any rate, given the fact that there would only be minor adverse impacts for windows below the standards and given that the existing limited level of VSC has resulted in some windows falling below the standards, I am satisfied that significant or undue impacts to daylight enjoyed by neighbouring residences would not arise consequent to the proposed development. I have not been presented within any other calculations that would differ from the information presented by the first party. Accordingly, a refusal of permission or modifications to the proposed development for reasons relating to daylighting to neighbouring properties would not be warranted.

Sunlight Provision

- 8.6.27. BS 8206-2:2008 recommends that interiors where the occupants expect sunlight should receive at least one quarter (25%) of APSH, including at least 5% WPSH. As part of their Sunlight, Daylight and Shadow Assessment report and their addendum

report the first-party appellant has also calculated the expected levels of APSH and WPSH for 48 windows in residences adjacent to or adjoining the appeal site. Only the windows that face within 90° of due south require testing. I acknowledge that an updated BS EN 17037:2018 'Daylight in Buildings' guide replaced the BS 8206-2: 2008 in May 2019 (in the UK) and an Irish Standard (IS) EN 17037:2018 has also been published, however, I am satisfied that these guidance documents do not have a material bearing on the outcome of my assessment and that the most relevant guidance documents remain those referenced in the Building Heights Guidelines.

8.6.28. With the exception of two of the window points, the remainder of the window points tested would either meet the target recommended APSH values over the annual period and during the winter period when sunlight is most valuable, or the difference between the probable sunlight hours, as existing and with the proposed development in place, would be within the 0.8 ratio of change allowed for in the standards. The two window points that would fail to achieve the target APSH value serve apartments in Richmond Gardens, with only minimal shortfalls of between 0.4% and 1.8% arising when compared with the target APSH value (25%). Some improvements in the baseline values are estimated, which would appear to be as a result of the removal of structures along the boundaries of the appeal site with neighbouring properties. I recognise that the testing indicates a shortfall in APSH for two window points, however, the vast majority of window points tested would be well within the recommended standards and the shortfalls identified would be very limited and not significant. I am satisfied that the levels of sunlight to the neighbouring properties following completion of the proposed development would allow for recommended targets to be met for the vast majority of residences in the area, including those referenced in the third-party appeals. The minor shortfall calculated for APSH to two neighbouring windows would be acceptable having regard to the established pattern of development in the area, the need to achieve an appropriate standard of urban design and streetscape, as well as the need to provide an adequate level of residential density and efficient use of these 'inner suburban / inner city' zoned lands.

Overshadowing

8.6.29. The BRE 209 Guide requires greater than half of neighbouring gardens to receive at least two hours of sunlight on the Spring equinox, or a change in circumstances that would be no less than a ratio of 0.8. The first-party appellant's lighting reports

identify those properties with greatest potential to be overshadowed by the proposed development, including a selection of rear amenity spaces serving Turlough Gardens, Philipsburgh Avenue and Fairview Strand, as well as the communal space serving Richmond Gardens. The results of testing are presented in graphical and table format by the first party. The first-party appellant's reports highlight that with the exception of the communal space serving Richmond Gardens and a yard serving no.57 Fairview Strand, all of the tested private amenity spaces would receive more than two hours sunlight for over half of their area during the Spring equinox. The change in sunlight to these spaces would not be less than a ratio of change of 0.8 when compared with the existing situation, with an average change ratio of 0.95 calculated by the first-party appellant. Light to the adjoining communal space serving Richmond Gardens is already substantially impeded by the orientation of the buildings onto this space, including the warehouse structure on the appeal site. While the subject development would reduce this further below the recommended standards, the proposed development would follow the building layouts established in this area and the impact on lighting to the communal space would not be likely to be significant in light of the present situation. The yard to no.57 is constantly in shade during the spring equinox, therefore, the proposed development would not impact this situation further via overshadowing.

- 8.6.30. The third-party appellants, as well as the Planning Authority, refer to the need for shadow analysis drawings, to illustrate the overshadowing arising from the proposed development. This would not be strictly necessary based on the guidance documents and I am satisfied that the first-party appellant has applied the appropriate tests based on modelling to identify the impacts of overshadowing arising.
- 8.6.31. In conclusion, based on the information provided showing substantive compliance with the minimum requisite standards, I am satisfied that undue overshadowing of neighbouring amenity spaces would not arise as a result of the proposed development. Where the identified minor shortfalls relative to the stated standards are calculated to arise, I am satisfied that this would be acceptable having regard to the established pattern of development in the area and the need to provide an adequate level of residential density and efficient use of these 'inner suburban / inner city' zoned lands.

Construction Impacts

- 8.6.32. Third-party appellants assert that the proposed development would result in nuisance for neighbouring residents as a result of disruption during the construction phase, including obstruction of access to the rear of houses along Turlough Gardens and Fairview Strand. The construction phase is estimated to take place over an 18-month period according to the Outline CMP submitted with the application, which sets out intended measures to address traffic during the construction phase, as well as control measures for noise, dust and vibration emissions.
- 8.6.33. Construction access would initially be from Fairview Strand to a compound on the west side of Esmond Avenue, in an area situated between proposed blocks A and B and entirely within the site. Parking along Esmond Avenue is restricted due to the existence of double-yellow lines on both sides of this road. Measures listed in the Outline CMP to control construction traffic, include use of assigned haul routes, measures to minimise the quantum of construction-related traffic on the surrounding road network and the agreement of a final construction traffic management plan with the Planning Authority prior to the commencement of the development. As a public road in charge of Dublin City Council, access along Esmond Avenue would have to be maintained and the Outline CMP states that construction vehicles would not be parked or stopped at the entrance to the site. Loading and unloading of vehicles would only occur within the site. It is estimated that HGV movements would vary over the different construction phases of the project, with the majority of HGV movements expected during the excavation and construction of the basement to proposed block B. Third-party appellants refer to concerns regarding the removal of the Rotary building on the rear boundary of the site with the service lane to Turlough Gardens. In response the first party noted that the construction could be undertaken in a manner comparable with other urban sites. I am satisfied that the scale and nature of the project is such that it would not present substantially difficult construction methods for a developer that would be uncommon for a development in an urban context or present substantive safety or security concerns for neighbouring residential properties.
- 8.6.34. A condition can be attached to restrict the construction hours and I am satisfied that construction phase impacts would only be of a temporary nature, would not have undue or significant impacts for neighbouring residents and would also be subject of

a final project Construction and Environmental Management Plan with a traffic management plan that can be agreed with the Planning Authority in the event of a grant of planning permission.

Conclusions

- 8.6.35. Sufficient information has been provided with the application and appeal to allow a comprehensive and thorough assessment of the impacts of the proposals on neighbouring residential amenities, as well as the wider area. I am satisfied that the proposed development would not result in excessive overshadowing or overlooking of neighbouring properties and would not have excessively overbearing impacts when viewed from neighbouring properties, as well as the public realm.
- 8.6.36. In conclusion, subject to conditions, the proposed development should not be refused permission for reasons relating to the likely resultant impacts on neighbouring amenities. The third-party appellants assert that the proposed development would lead to a depreciation in the value of property in the vicinity. Following on from the assessment above, including the suggested amendments, sufficient substantive and objective evidence has not been provided to support claims that the proposed development would be likely to result in a depreciation of property values in the vicinity.

8.7. Residential Amenities and Development Standards

- 8.7.1. Sufficient information, including a Housing Quality Report, a Social Community Audit & Child Care Analysis and a Sunlight, Daylight & Shadow Assessment, has been provided with the application to allow a comprehensive and thorough assessment of the standard of accommodation and services that would be provided for future residents as part of the proposed development. With the exception of the aspect to the proposed apartments, the third-party appellants have not contested other specific standards of the proposed residential units. The third-party appellants' concerns with respect to the standards of the proposed apartments refers to the limited outlook that may arise for the future residents, particularly given the limited separation distances between existing and proposed buildings. The first-party appellant asserts that the development would provide for quality residential accommodation compliant with the New Apartment Guidelines, while contesting the means of calculating the

contribution arising from the shortfall in public open space proposed in the development. I recognise that the Planning Authority has not found issue with the proposed apartment sizes or the level of sunlight and illuminance to the proposed apartments, and they have attached planning conditions requiring amendments to address aspect to several of the apartments, as well as the provision of defensible space to block B ground-floor apartments onto the communal space. The provision of defensible space would appear reasonable and is not contested, and I address aspect to the apartments below. I am satisfied that the proposed development would provide a suitable mix and size of apartments, compliant with the relevant design standards provided for in the Development Plan and the New Apartment Guidelines. As per the comments from the Planning Authority, there would not appear to be a necessity to provide a childcare facility as part of the proposed development and based on the information presented, there would appear to be capacity in neighbouring childcare facilities and social infrastructures in the vicinity to cater for the proposed development.

Public Open Space

- 8.7.2. Section 15.8.6 of the Development Plan states that there is a requirement for 10% of Z1, Z2 and Z10-zoned lands to be provided as meaningful public open space in development proposals, which would amount to 519sq.m for the subject development. The first-party appellant states that 204sq.m of the public open space would be provided within the development, in the form of plazas fronting the proposed commercial units at the entrances to blocks A and B (122sq.m) and the bookend building (82sq.m). These spaces would be of limited functional benefit but would be accessible to the public, albeit with some measures to prevent vehicles parking in these areas. The applicant's Sunlight, Daylight and Shadow Assessment report illustrates that only the public open space plaza fronting the bookend building would receive at least two hours of sunlight on the Spring equinox to at least half of its area in line with the recommendation in the BRE 209 Guide. When considering the urban context, the fact that the BRE 209 Guide is only to be used for guidance purposes and given the other proposed open spaces, including private and communal spaces, within the development, I am satisfied that the shortfall in sunlight to the central plaza areas would not be prejudicial to the amenities of future residents of the scheme or the public, particularly having regard to the need to ensure that the

site is developed at sustainable densities relative to the aforementioned site context and zoning.

- 8.7.3. A shortfall in public open space would arise, however, section 15.8.7 of the Development Plan states that it may be appropriate for a contribution in lieu of a shortfall in public open space to be requested, having regard to the existing open space provision in the vicinity or the upgrade of an existing park. Given the site context a 300m walk from Fairview Park, the immediate fine-urban grain, the shortfall in the proposed provision of public open space on site and the Development Plan provisions, I am satisfied that a contribution in lieu of the shortfall in public open space would be reasonable in the event of a grant of permission for the proposed development. Such a condition would not fall into the type of conditions allowed for under section 34(4) of the Act of 2000.
- 8.7.4. Condition no.15(b) of the Planning Authority decision requires that prior to commencement of any development on site the applicant shall liaise with the Parks, Biodiversity and Landscape Services Division with regard to agreeing the shortfall in usable public open space as a basis for payment in lieu calculations. The first-party appellant does not contest the overall requirement for a contribution in lieu of a shortfall in public open space, however, they consider this should account for the provision of 204sq.m of public open space on site forming 40% of the open space requirement and that the condition should reflect same. The Dublin City Council Section 48 Development Contribution Scheme 2023-2026 details how a contribution in lieu of public open space is to be calculated, therefore, under the terms of section 48 of the Act of 2000 calculation of this contribution can be agreed as a standard section 48 development contribution condition attached to a decision. Based on the assessment above, it would appear reasonable to account for only the shortfall in public open space (315sq.m) when calculating the contribution arising.

Aspect

- 8.7.5. With regard to aspect, the Development Plan refers to standards contained in SPPR 4 of the New Apartment Guidelines, which require 33% dual aspect apartments in accessible urban locations, such as the appeal site area. A total of 57 apartments are stated to form dual aspect units, which would equate to 50% of the apartments within the scheme. Having reviewed the drawings submitted, I am satisfied that the

provision of dual aspect units would be in compliance with SPPR4 of the New Apartment Guidelines, although I recognise that ten north-facing, single-aspect apartments are proposed. The north-facing single-aspect apartments would be in block B overlooking a communal area. The New Apartment Guidelines allow for such apartments, where they would overlook a significant amenity, such as a public park, garden or formal space, or a water body or some other amenity feature. To address the number of north-facing, single-aspect apartments the Planning Authority required the amalgamation of the north-facing, single-aspect apartments on each floor, including apartments 4B-B-04 and Unit 3B-B-03 on the ground floor of block B and the apartments in similar positions on the floors directly above. The Planning Authority also requested the recessing of the northern elevation to provide a 2m setback to create dual aspect for the amalgamated apartments.

- 8.7.6. I do not consider the suggested recessing of the elevation would facilitate the units amalgamating to form dual aspect units based on the illustrative guidance defining dual aspect in the Development Plan. Consequently, there would appear no merit in amending the apartments in line with the Planning Authority request.
- Notwithstanding this, and given the limited provision of sunlight to the communal space adjoining proposed block B, to reduce the extent of north-facing, single-aspect apartments in the proposed development, amalgamation of the two-bedroom apartment 2B-B-02 with the one-bedroom apartment 3B-B-03 on the ground floor to proposed block B with revised internal layouts compliant with the provisions of the New Apartment Guidelines and the eight apartments in similar positions on the floors directly above would reduce the number of single-aspect units to five. This would be in the interests of the amenities of future residents of the scheme and could be addressed as a condition of the permission if the Board warrant this. This would result in the overall number of apartments proposed reducing to 109.

Lighting

- 8.7.7. Section 6.6 of the New Apartment Guidelines also states that Planning Authority's should have regard to BRE 209, Irish Standard (IS) EN 17037:2018 and UK National Annex BS 17037:2018 for lighting standards, all of which are referenced in appendix 16 of the Development Plan. The BRE 209 Guide and BS 8206-2:2008 standards recommend that for the main living spaces/living rooms of residences, a minimum average daylight factor (ADF) of 1.5% should be achieved, with a 1% ADF for

bedrooms and a 2% ADF for kitchens. The applicant has referred to these targets and also the more recent IS EN 17037:2018 and BS EN 17037:2018 in their Daylight, Sunlight and Overshadowing Study. IS EN 17037:2018 sets out tests for three recommended levels of daylight provision based upon the extent of space and time to receive daylight in a room and the level of illuminance relative to the site location. BS EN 17037:2018 follows a similar testing approach, albeit with an additional annex to these standards setting varied targets for bedrooms, living rooms and kitchens, and assessment only against lighting for half the space and time.

8.7.8. The results of testing for 274 proposed bedrooms and living/kitchen/dining rooms, are presented in tabular and graphical format in the first-party appellant's Sunlight, Daylight & Shadow Assessment. The results of testing for the proposed development against the Irish and British standards calculated that 91% of the rooms would be comply with the requirements and where only marginal shortfalls arise this would rise to 99% of the rooms tested. It is also asserted by the first-party appellant that flexibility needs to be applied when assessing the proposals against the lighting standards and that compensatory measures have been incorporated into the proposals, generally comprising continuation of the street pattern to improve permeability. With respect to compensatory design measures, I would also note the unit sizes relative to the requisite standards and the extensive use of glazing where appropriate throughout the apartment elevations.

8.7.9. A reasonable approach to testing the daylight and sunlight to apartments has been set out in the application in my opinion, including testing against a range of standards. Based on the information presented in the application, including the referenced compensatory measures and the results of testing against a range of standards, I am satisfied that the daylight and sunlight to the proposed development in this context would provide for suitable levels of residential amenity for future residents of the development.

Stair and Lift / Core Access

8.7.10. The Planning Authority identified that nine apartments would be serviced by one lift / stair core circulation space, which would comply with SPRR 6 of the New Apartment Guidelines allowing for up to 12 units to be serviced in such a manner, but would fail to comply with standards of the previous Development Plan 2016-2022 allowing for

eight units to be serviced. The new Development Plan 2022-2028 refers to SPPR 6 of the New Apartment Guidelines when addressing lift / stair core access, therefore, the proposals would comply with the appropriate standards in this regard.

Services

- 8.7.11. Concerns have not been expressed by parties to the appeal with respect to the provision of environmental services for the proposed development, including water supply, wastewater and surface water drainage. As part of the Engineering Services Report the first-party appellant sets out that a pre-connection enquiry submitted to Irish Water provided a favourable response with regard to water and wastewater services for the proposed development. Subject to standard conditions, including those relating to connections to Irish Water services, I am satisfied that suitable provision for environmental services has been set out in the documentation submitted by the first-party appellant.
- 8.7.12. Flood risk has not been raised as a significant issue in the appeals to the Board or during consideration of the application by the Planning Authority. The application was accompanied by a flood risk assessment, which concluded that as the site was not subject to a risk of flooding, it would be within flood risk zone C, as defined in The Planning System and Flood Risk Management, Guidelines for Planning Authorities, where a residential development is stated to be appropriate. Based on the information presented, I am satisfied that the proposed development would not be at risk of flooding, nor would it increase the risk of flooding to other lands, with runoff from the site proposed to discharge at greenfield rates.

Conclusion

- 8.7.13. In conclusion, subject to conditions, I am satisfied that the proposed development would provide a suitable mix and standard of apartments and amenities, meeting the relevant design standards and providing a suitable level of amenity for future residents.

8.8. Access, Parking and Traffic

- 8.8.1. The Roads Department of the Planning Authority did not object to the proposed development, although they did raise several issues in relation to access and movement within the site, while also addressing the details of cycle parking provision

and construction details. The neighbouring third-party appellants refer to concerns in relation to the potential for the development to result in increased traffic congestion and overspill car parking in the immediate area.

Access and Connectivity

- 8.8.2. As noted in section 8.3 above, based on the information available I am satisfied that the proposed development would be served by high-frequency and high-capacity, public transport within an easy walking distance. The site is currently accessible by vehicles from Esmond Avenue off Fairview Strand. Esmond Avenue does not feature footpaths or cycle lanes, and it provides access to commercial premises, a service lane and rear yards to residential properties. Double-yellow lines run parallel with both sides of Esmond Avenue.
- 8.8.3. The first-party appellant proposes use of an existing ramped access off Fairview Close to access the basement parking level under proposed block B. Consequently, the majority of vehicles serving the proposed development would use Richmond Avenue and Richmond Road. Vehicular access would be maintained along Esmond Avenue with a carriageway width of 5.5m and a 2m-wide footpath provided along the western side of this road leading to the rear of the site. A raised table and tactile paving would be installed at the entrance to Esmond Avenue from Fairview Strand. Limited vehicular movements would be expected along Esmond Avenue with a set down space provided on the shared surface road off a raised table positioned centrally along Esmond Avenue. Swept-path diagrams are included in the application package to illustrate how various vehicles would access and egress the development.
- 8.8.4. Parking spaces are not proposed along Esmond Avenue, although it is not clear if any restrictions, such as the existing double-yellow lines would be undertaken to curtail informal parking along the public road. The Service and Operation Management Plan submitted with the subject application sets out that a development management company would be responsible for establishing and enforcing restrictions on the nature and scheduling of vehicular servicing operations within the site. While I note the management measures within the application package to control parking within the site, a condition to require the details of how car parking would be controlled along Esmond Avenue would be necessary in the event of a

grant of planning permission for the proposed development. The proposals set out would invariably improve the access arrangements along Esmond Avenue.

- 8.8.5. A separate pedestrian/cyclist/emergency access would also be provided from Fairview Close with a set of demountable bollards on the boundary restricting access. The Planning Authority has welcomed this element of the development, given its benefits in line with planning policy to increase permeability within developments and connectivity across urban areas. The Planning Authority has requested some alterations with respect to this new access, in order to further restrict vehicular traffic movements between the developments for emergency vehicles only. To affect this condition 17(b)(ii) of the Planning Authority decision requires revised documents and drawings to be submitted to the Planning Authority for agreement, providing a second set of demountable bollards or alternative additional physical barrier measures on site. The first-party appellant asserts that condition no.17(b)(ii) should be reworded, as a second set of demountable bollards may not be necessary. The Planning Authority note that a Memorandum included with the subject application states that maintenance will be conducted on the demountable bollards on a minimum monthly basis to ensure they are in working order. The proposed demountable bollards will be removed and inspected at intervals not exceeding one month and bollards shall not be left in place during periods where they are not operating correctly. Unrestricted vehicular access between Fairview Close and the proposed development should be resisted given the scope for this route to serve as a short cut catering for through traffic at a level not envisaged in the application and with substantive risks to road safety. Given the wording of the application Memorandum and as the first party has not provided any alternative means of addressing the concerns within their response I am satisfied that the condition should remain in the event of a grant of planning permission for the proposed development.
- 8.8.6. The first-party appellant has also requested a revised wording for condition no.17(g) of the Planning Authority decision, which requires details of the materials proposed in public areas to be in accordance with Dublin City Council titled Construction Standards for Roads and Street Works. Any proposed works to the public road shall be carried out by Dublin City Council and at the expense of the applicant/developer. The first-party appellant considers this condition to result in a considerable level of

uncertainty and they request that an alternative wording should be used allowing the developer to carry out the works or attach a requirement for a default in agreement of costs to be determined by the Board. The Construction Standards for Roads and Street Works provide detailed requirements for public roads and streets, which appear reasonable, and I am satisfied that there would be not be a requirement to revise this element of the condition. Should agreement on this condition not be reached there would be merit in this matter being subject to determination by the Board and the condition can be revised to reflect this.

Parking

- 8.8.7. The third-party appellants raise concerns with respect to the allocation of car parking for residents and visitors to the apartments, as well as staff and patrons of the non-residential units. The subject application proposes a total of 26 car parking spaces to serve the development, which would be at basement level to block B. No spaces are to be allocated for the non-residential uses. Two spaces would feature access for persons with a disability and four spaces would feature electric-vehicle charging points. Two motorcycle parking spaces are also proposed, as well as two car-share spaces. The Planning Authority note some discrepancies with reference to the number and allocation of parking spaces, and they require 20% of spaces to feature electric-vehicle charging points. The first-party appellant considers the provision of car parking to serve the residential units to be appropriate with reference to the maximum Development Plan standards allowing for up to one car parking spaces per apartment and the provisions of the New Apartment Guidelines seeking to minimise car parking provision in large-scale, high-density apartment developments that are in locations well served by public transport.
- 8.8.8. The New Apartment Guidelines advocate the consideration of reduced overall car parking in urban locations served by public transport or close to urban centres, particularly in high-density residential developments with a net density of greater than 45 units per hectare. The Planning Authority notes the Mobility Management Plan and Car Parking Management Strategy provided with the application, including the various measures to influence use of more sustainable modes of transport and control car parking for residents only as part of the development. The proposed ratio of parking per apartment amounting to 0.21 would be greater than that of a number of recently permitted apartment schemes in the neighbouring area, including those

referenced above located nearby on Richmond Avenue (DCC refs. 3295/21 and 3483/22), which would not feature any on-site parking. The Traffic and Transport Assessment report submitted with the subject application notes the availability of spaces along public streets in the immediate area, which could be used by patrons and visitors to the development.

- 8.8.9. I am satisfied that car parking standards below the maximum Development Plan standards for the proposed development would be reasonable, given its location relative to public transport services. Based on the information submitted with the application, I am satisfied that with the implementation of the mobility management plan and car parking management strategy, sufficient car parking would be provided to serve the proposed development. Ducting to allow for all car spaces to feature electric-vehicle charge points should also be required as a condition in the event of a permission. The Planning Authority accept that an adequate level of cycle parking spaces would be provided as part of the proposed development, although some minor alterations would be required with respect to the detail of cycle parking facilities and access, which I am satisfied can be addressed as a condition to a permission.

Traffic

- 8.8.10. The third-party appellants refer to an array of concerns regarding the potential for the development to increase traffic congestion and risks to road safety already experienced in the area. A Traffic and Transport Assessment was included as part of the application to the Planning Authority, which provides traffic survey details from 2022 for seven junctions along Fairview Strand, Richmond Road and Richmond Avenue.
- 8.8.11. Using Picady software analyses the first-party appellant undertook modelling of the traffic in the opening year (2025) with the development complete. The modelling submitted predicts that based on TRICS database, car-ownership data and the development details, during the morning peak hour (08:00 – 09:00) the number of vehicles exiting onto Richmond Avenue from Fairview Close would amount to 22 trips, with 21 returning trips during the evening peak hour (17:00 – 18:00). The submitted Traffic and Transport Assessment asserts that 96% of the traffic exiting the development from Fairview Close would turn left onto Richmond Avenue and all

the evening peak hour traffic would travel northwards along Richmond Avenue before turning right into Fairview Close.

- 8.8.12. If permitted, during peak hours the completed proposed development would result in increases in traffic amounting to between 0.1% and 2.5% at six of the assessed junctions. Based on the Traffic and Transport Assessment Guidelines (Transport Infrastructure Ireland, 2014), further assessment of these junctions would not be necessary, as the proportionate impacts on traffic would not be considered significant. The proportional increase in traffic during peak hours at the Richmond Avenue / Fairview Close junction would increase by 24.4% in the morning peak hour and 28.2% in the evening peak hour. The first-party appellant asserts that based on forecasted growth scenarios and modelling no increase in vehicle queue length would arise and the increase in traffic delay for motorists would be akin to 0.2 seconds.
- 8.8.13. The existing traffic levels onto Fairview Close would be quite low, and the likely increase in traffic onto this road arising from the proposed development would not be likely to be significant, given the extent of parking proposed. I am satisfied that based on the information provided in the Traffic and Transport Assessment, a reasonable approach to modelling future traffic scenarios on the local road network with the development in place has been set out and this does not reveal substantive impacts on traffic. The assessment follows the Transport Infrastructure Ireland guidance on this matter and an alternative technical assessment contradicting the approach or the findings of the assessment submitted has not been provided. Furthermore, the Planning Authority has not objected to the proposed development based on the findings of the traffic assessment, and I am satisfied that the first-party appellant has provided adequate justification and rationale for the approach undertaken in their Traffic and Transport Assessment with sufficient information included for the purpose of this assessment.
- 8.8.14. The site is located on zoned lands with reasonable access to an array of services. The proposed development would provide for a substantive scale of development, replacing existing commercial and unused buildings. There would undoubtedly be some increase in traffic numbers as a result of the proposed development, which would invariably add to the existing congestion that is referenced by third parties. However, traffic congestion at peak periods in an urban area such as this, would be

anticipated to occur and various measures and design features have been set out within the application and appeal to support the use of public transport, cycling and walking, as an alternative to the use of private vehicles. All road networks feature limited capacity in terms of accommodation of private cars and increased population in locations such as the appeal site area, which are well served by public transport and have the capability for additional services as demand requires, should be developed in the interest of providing for sustainable communities.

Conclusion

- 8.8.15. In conclusion, subject to conditions, suitable access would be provided to the proposed development, significant traffic congestion in the wider area would not be likely to arise from the proposed development and it would feature an appropriate provision of parking.

9.0 Environmental Impact Assessment Screening

- 9.1.1. The application addresses the issue of EIA within an EIA Screening Report that contains information to be provided in line with Schedule 7A of the Planning Regulations. I have had regard to same in this screening assessment. The information provided in the application EIA Screening Report identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. Where an application is made for subthreshold development and Schedule 7A information is submitted, the Board must carry out a screening determination, therefore, it cannot screen out the need for EIA at preliminary examination.
- 9.1.2. This proposed development is of a class of development included in Schedule 5 to the Planning Regulations. Schedule 5 to Part 2 of the Planning Regulations provides that mandatory EIA is required for the following classes of development:
- Class 10(b)(i) construction of more than 500 dwelling units,
 - Class 10(b)(iv) urban development, which would involve an area greater than 2 ha in the case of a business district*, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

*a 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.

- 9.1.3. Class 14 of Part 2 to Schedule 5 of the Planning Regulations provides that mandatory EIA is required for:
- works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.
- 9.1.4. The development would provide for the demolition of various structures amounting to a gross floor area of 1,436sq.m, the construction of 114 apartments, a gym facility, a café unit, a local retail unit and a new dry cleaner's premises, and associated infrastructural works, including basement structures, all on a gross site area measuring 0.58ha in a non-business district in a built-up urban area. The net proposed residential area of the development site is stated to amount to 0.52ha. Having regard to classes 10(b)(i) and 10(b)(iv) of Schedule 5 to Part 2 of the Planning Regulations, the proposed development is subthreshold in terms of the mandatory submission of an EIA. The nature and the size of the proposed development is below the applicable class 10(b) thresholds for EIA. Further consideration with respect to 'class 14' demolition works is undertaken below.
- 9.1.5. The criteria within Schedule 7 to the Planning Regulations are relevant in considering whether this proposed development would be likely to have significant effects on the environment that could and should be the subject of EIA. The residential and non-residential uses proposed would be similar to the surrounding land uses in the area, particularly the apartment developments to the west. The proposed development would not increase the risk of flooding and it would not give rise to significant use of natural resources, the production of waste, pollution, nuisance or a risk of accidents. The existing basement structure is noted, and significant constraints in developing the site at the scale proposed have not been identified. The development would be served by municipal foul wastewater drainage and water supplies. The site adjoins two Protected Structures and there is two NIAH-listed houses on site, which would be refurbished and reused for residential purposes. It does not support substantive habitats or species of conservation significance, as highlighted in the Ecological Impact Assessment submitted with the

application. Connectivity of the site with protected areas and their associated qualifying interest species is considered further below in section 10 of this report. Recorded monuments or places of cultural heritage value have been identified on the adjoining site with archaeological assessment and comments from the Archaeology, Conservation and Heritage (Archaeology Officer) section of the Planning Authority recommending various measures to preserve or preserve by record archaeological material likely to be damaged or destroyed during the course of the proposed development. The development would utilise an existing underground structure to the adjoining Fairview Close development, which was granted permission in 2004 for 123 apartments, a childcare facility, a shop and a commercial unit on a site measuring 0.71ha. The nature and the size of the proposed development alongside this existing development remains below the applicable class 10(b) thresholds for EIA.

9.1.6. The reports submitted with the application, as listed in section 3.3 above, address a variety of environmental issues and the environmental impacts of the proposed development. The reports demonstrate that, subject to the various recommended construction and design-related mitigation measures, the proposed development would not have a significant impact on the environment. I have had regard to the characteristics of the site, the location of the proposed development, and the type and characteristics of the potential impacts. Having regard to the Schedule 7A information, I have examined the sub-criteria and all submissions, and I have considered all information that accompanied the application and appeal, including the following:

- EIA Screening Report;
- AA Screening Report and NIS;
- Ecological Impact Assessment;
- Statement of Consistency and Planning Report;
- Design Report and Visual Impact Statement;
- Engineering Services Report;
- Outline CEMP;
- Outline CMP;

- Traffic and Transport Assessment.

9.1.7. In addition, noting the requirements of Article 103(1A)(a) of the Planning Regulations, the first party has provided a statement indicating how the available results of other relevant assessments have been taken into account on the effects of the project on the environment carried out pursuant to European Union legislation other than the EIA Directive. In this regard I note the following EU Directives are directly addressed by the first party in their 'Statement in Accordance with Article 103(1A)(a) of the Planning and Development Regulations 2001-2022':

- Directive 92/43/EEC – Habitats Directive;
- Directive 2009/147/EC – Birds Directive;
- Directive 2001/42/EC – Strategic Environmental Assessment Directive;
- Directive 2000/60/EC - Water Framework Directive;
- Directive 2008/98/EC - Waste Framework Directive;
- Directive 96/82/EC - Seveso II Directive;
- Directive 2012/18/EU - Seveso III Directive;
- Directive 2007/60/EC - Floods Directive;
- Directive 2008/56/EC - Marine Strategy Framework Directive;
- Directive 2008/50/EC - Ambient Air Quality / Clean Air for Europe Directive;
- Directive 2010/75/EU - Industrial Emissions Directive;
- Directive 2002/49/EC - Environment Noise Directive;
- Directive 1315/2013 – Trans-European Networks in Transport, Energy and Telecommunication Regulation.

9.1.8. Under the relevant themed headings, the EIA screening information prepared by the first-party appellant addresses the implications and interactions of the proposed development, and concludes that the development would not be likely to have significant effects on the environment. I am satisfied that all other relevant assessments have been identified for the purposes of screening for EIA. I have had regard to all of the reports detailed above and I have taken them into account in this assessment, together with the Strategic Environmental Assessment of the

Development Plan. I am satisfied that the information required under Article 103(1A)(a) of the Planning Regulations has been submitted.

- 9.1.9. I have completed an EIA screening assessment of the proposed development with respect to all relevant considerations, as set out in Appendix A to this report. I am satisfied that the location of the project and the environmental sensitivity of the geographical area would not justify a conclusion that the proposed development would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects that would be rendered significant by their extent, magnitude, complexity, probability, duration, frequency or reversibility, and this opinion extends to my conclusion that the proposed development is subthreshold in terms of the mandatory submission of an EIA based on class 14 of Part 2 to Schedule 5 of the Planning Regulations. In these circumstances, the application of the criteria in Schedule 7 of the Planning Regulations to the proposed subthreshold development demonstrates that it would not be likely to have significant effects on the environment and that an EIA is not required should a decision to grant planning permission for the project be arrived at. This conclusion is consistent with the EIA screening information submitted with the subject application and the opinion of the Planning Authority. A Screening Determination can be issued confirming that there is no requirement for an EIA Report to be prepared for the project based on the above considerations.

10.0 Appropriate Assessment

- 10.1.1. The proposed development on Esmond Avenue, is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3) of the Habitats Directive. The requirements of Article 6(3) of the Habitats Directive, relating to screening the need for appropriate assessment (AA) of a project under section 177U of the Act of 2000, are considered in the following section.

10.2. Stage 1 AA Screening

- 10.2.1. An AA Screening & NIS dated October 2022 and prepared by professional ecologists from Altemar Marine & Environmental Consultancy was submitted with the subject

application. This Report provides a description of the proposed development and identifies European Sites within the possible zone of influence of the development.

Site Location

10.2.2. A description of the site is provided in section 2 above and throughout the assessments above. The site comprises brownfield land and contains numerous buildings with associated made ground, as well as a basement structure. The habitats recorded on site, as listed in the application Ecological Impact Assessment, are stated to comprise buildings and artificial surfaces (BL3), bare ground (ED2) and scrub (WS1). No Annex I habitats were recorded within the appeal site during the application habitat surveys and no species listed for protection under the Habitats Directive or the Wildlife Act were recorded as using the site. Invasive species were not recorded on the appeal site during surveys for the submitted Ecological Impact Assessment. The River Tolka is located approximately 90m to the southwest of the appeal site and this is the closest substantial natural waterbody to the appeal site, flowing southeast towards Dublin Bay, including the Tolka estuary area. The Royal Canal is situated 630m to the southwest of the site.

Proposed Development

10.2.3. A detailed description of the proposed development is provided in section 2 above and expanded upon below where necessary. Details of the construction phase of the development are provided throughout the subject application documentation, including the Outline CEMP, the Outline CMP and the Construction and Demolition Waste Management Plan. Foul wastewater from the operational phase of the proposed development would discharge to the public network for treatment at the Ringsend Wastewater Treatment Plant (WWTP). Following various standard practice construction site environmental management measures, as well as SUDS measures, surface waters would be discharged into the network running along Fairview Strand, which the first-party appellant states to drain into the River Tolka. Ultimately the resultant treated wastewaters and surface waters from the proposed development would discharge to Dublin Bay.

10.2.4. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works and which could have a negative effect on the qualifying interests of European sites, include the following:

- Construction Phase – demolition, surface water runoff, disturbance and emissions, including dust, noise and vibration;
- Operation Phase – disturbance, surface water runoff and emissions to water.

Submissions and Observations

10.2.5. The submissions and observations from the appellants, observers, the Planning Authority and prescribed bodies are summarised in sections 5 and 7 of this Report. The Planning Authority acknowledge the approach taken by the applicant with respect to their consideration of the likely significant effects on European sites and the mitigation measures for the construction phase of the project. The Planning Authority is satisfied that the project either alone or in combination with other plans or projects, in view of best scientific knowledge and in view of the sites' features and conservation objectives, would not adversely affect the integrity of European sites. During consideration of the planning application, it was asserted by observers that thorough on-site investigations are needed for the AA Screening Report and NIS. The Department of Housing, Local Government and Heritage submission to the Planning Authority noted that if mitigation measures with respect to the avoidance of mobilisation of pollutants from the site are implemented, the proposed development would not result in any adverse effects on European sites and a condition requiring a final CEMP should be submitted to the Planning Authority.

European Sites

10.2.6. The nearest European sites to the appeal site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), comprise the following:

Table 5. European Sites

Site Code	Site Name / Qualifying Interests	Distance	Direction
004024	South Dublin Bay and River Tolka Estuary SPA <ul style="list-style-type: none"> • Light-bellied Brent goose <i>Branta bernicla hrota</i> [A046] • Oystercatcher <i>Haematopus ostralegus</i> [A130] • Ringed plover <i>Charadrius hiaticula</i> [A137] • Grey plover <i>Pluvialis squatarola</i> [A141] • Knot <i>Calidris canutus</i> [A143] • Sanderling <i>Calidris alba</i> [A149] 	0.9km	east

	<ul style="list-style-type: none"> • Dunlin <i>Calidris alpina</i> [A149] • Bar-tailed godwit <i>Limosa lapponica</i> [A157] • Redshank <i>Tringa totanus</i> [A162] • Black-headed gull <i>Chroicocephalus ridibundus</i> [A179] • Roseate tern [A193] • Arctic tern [A194] • Wetland and waterbirds [A999] 		
000210	<p>South Dublin Bay SAC</p> <ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140] • Annual vegetation of drift lines [1210] • Salicornia and other annuals colonising mud and sand [1310] • Embryonic shifting dunes [2110] 	3.5km	southeast
000206	<p>North Dublin Bay SAC</p> <ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140] • Annual vegetation of drift lines [1210] • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows [1330] • Mediterranean salt meadows [1410] • Embryonic shifting dunes [2110] • Shifting dunes along the shoreline with marram grass <i>Ammophila arenaria</i> (white dunes) [2120] • Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] • Humid dune slacks [2190] • Petalwort <i>Petalophyllum ralfsii</i> [1395] 	3.9km	east
004006	<p>North Bull Island SPA</p> <ul style="list-style-type: none"> • Light-bellied brent goose [A046] • Shelduck <i>Tadorna</i> [A048] • Teal <i>Anas crecca</i> [A054] • Pintail <i>Anas acuta</i> [A054] • Shoveler <i>Anas clypeata</i> [A056] • Oystercatcher [A130] • Golden plover <i>Pluvialis apricaria</i> [A140] 	3.9km	east

	<ul style="list-style-type: none"> • Grey plover [A141] • Knot [A143] • Sanderling [A144] • Dunlin [A149] • Black-tailed godwit <i>Limosa</i> [A156] • Bar-tailed godwit [A157] • Curlew <i>Numenius arquata</i> [A160] • Redshank [A162] • Turnstone <i>Arenaria totanus</i> [A169] • Black-headed gull [A179] • Wetland and waterbirds [A999] 		
000199	<p>Baldoye Bay SAC</p> <ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140] • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330] • Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] 	8.2km	northeast
004016	<p>Baldoye Bay SPA</p> <ul style="list-style-type: none"> • Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] • Shelduck (<i>Tadorna tadorna</i>) [A048] • Ringed Plover (<i>Charadrius hiaticula</i>) [A137] • Golden Plover (<i>Pluvialis apricaria</i>) [A140] • Grey Plover (<i>Pluvialis squatarola</i>) [A141] • Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] • Wetland and Waterbirds [A999] 	8.5km	northeast
004113	<p>Howth Head Coast SAC</p> <ul style="list-style-type: none"> • Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] • European dry heaths [4030] 	9.6km	northeast
003000	<p>Rockabill to Dalkey Islands SAC</p> <ul style="list-style-type: none"> • Harbour porpoise [1351] • Reefs [1170] 	10.1km	east
000205	<p>Malahide Estuary SAC</p>	10.9km	north

	<ul style="list-style-type: none"> • 1140 Mudflats and sandflats not covered by seawater at low tide • 1310 Salicornia and other annuals colonising mud and sand • 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) • 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) • 2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) • 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)* 		
004025	<p>Malahide Estuary SPA</p> <ul style="list-style-type: none"> • A130 Oystercatcher (<i>Haematopus ostralegus</i>) • A005 Great Crested Grebe (<i>Podiceps cristatus</i>) • A162 Redshank (<i>Tringa totanus</i>) • A067 Goldeneye (<i>Bucephala clangula</i>) • A141 Grey Plover (<i>Pluvialis squatarola</i>) • A149 Dunlin (<i>Calidris alpina</i>) • A046 Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) • A054 Pintail (<i>Anas acuta</i>) • A048 Shelduck (<i>Tadorna tadorna</i>) • A069 Red-breasted Merganser (<i>Mergus serrator</i>) • A143 Knot (<i>Calidris canutus</i>) • A156 Black-tailed Godwit (<i>Limosa limosa</i>) • A140 Golden Plover (<i>Pluvialis apricaria</i>) • A157 Bar-tailed Godwit (<i>Limosa lapponica</i>) <p>Habitats</p> <ul style="list-style-type: none"> • Wetlands 	10.9km	north
004117	<p>Ireland's Eye SPA</p> <ul style="list-style-type: none"> • A017 Cormorant (<i>Phalacrocorax carbo</i>) • A184 Herring Gull (<i>Larus argentatus</i>) • A188 Kittiwake (<i>Rissa tridactyla</i>) • A199 Guillemot (<i>Uria aalge</i>) • A200 Razorbill (<i>Alca torda</i>) 	12.2km	east

004113	Howth Head Coast SPA <ul style="list-style-type: none"> • A188 Kittiwake (<i>Rissa tridactyla</i>) 	12.3km	northeast
002193	Ireland's Eye SAC <ul style="list-style-type: none"> • 1220 Perennial vegetation of stony banks • 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 	12.4km	east
004172	Dalkey Islands SPA <ul style="list-style-type: none"> • A192 Roseate Tern (<i>Sterna dougallii</i>) • A194 Arctic Tern (<i>Sterna paradisaea</i>) • A193 Common Tern (<i>Sterna hirundo</i>) 	13.5km	southeast
002122	Wicklow Mountains SAC <ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110] • Natural dystrophic lakes and ponds [3160] • Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010] • European dry heaths [4030] • Alpine and Boreal heaths [4060] • Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130] • Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230] • Blanket bogs (* if active bog) [7130] • Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) [8110] • Calcareous rocky slopes with chasmophytic vegetation [8210] • Siliceous rocky slopes with chasmophytic vegetation [8220] • Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0] • <i>Lutra lutra</i> (Otter) [1355] 	14.2km	south
001209	Glenasmole Valley SAC <ul style="list-style-type: none"> • Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* important orchid sites) [6210] 	14.4km	southwest

	<ul style="list-style-type: none"> • Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] • Petrifying springs with tufa formation (Cratoneurion) [7220] 		
004040	Wicklow Mountains SPA <ul style="list-style-type: none"> • Merlin (Falco columbarius) [A098] • Peregrine (Falco peregrinus) [A103] 	14.4km	south

10.2.7. In determining the zone of influence for the proposed development I have had regard to the nature and scale of the project, the distance from the development site to European sites, and any potential pathways that may exist from the development site to a European Site. Table 2 of the application screening report identifies the potential links from European sites to the appeal site. Distances and direction from the site to European sites are listed in table 5 above. I do not consider that any other European Sites other than those identified in table 6 potentially fall within the zone of influence of the project, having regard to the nature and scale of the development, the results of ecological surveys for the site, the distance from the development site to same, and the lack of an obvious pathway to same from the development site.

Table 6. Identification of relevant European Sites using Source-Pathway-Receptor model and compilation of information (Qualifying Interests and Conservation Objectives)

Site Name / Code	Qualifying Interests (QIs) / Special Conservation Interest (SCIs)	Connections	Consider Further
South Dublin Bay and River Tolka Estuary SPA 004024	QIs – 14 bird species https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004024.pdf	Weak hydrological connections exist through: Surface water ultimately discharging to Dublin Bay Wastewater from the site passes and would be treated in Ringsend WWTP, which also discharges to Dublin Bay.	Yes
North Bull Island SPA 004006	QIs – 18 bird species To maintain the favourable conservation condition of the wetland habitat in North Bull Island SPA as a resource for the regularly occurring migratory waterbirds that utilise it		

	To maintain the favourable conservation condition of the qualifying species		
North Dublin Bay SAC 000206	QIs – ten coastal habitats and species https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000206.pdf		
South Dublin Bay SAC 000210	QIs - Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110] https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000210.pdf		

10.3. Potential Effects

10.3.1. Habitat loss and fragmentation would not arise given the location and nature of the site. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- surface water drainage from the proposed development site during construction and operational phases;
- increased noise, dust and/or vibrations as a result of construction activity;
- increased wastewater being sent to Ringsend WWTP during the operational phase of the proposed development.

Construction Phase

10.3.2. There are no surface watercourses on site based on the survey data for the site and the drainage proposals submitted. Surface water from the proposed development

would drain to the surface water network running along Fairview Strand, which drains into the River Tolka and ultimately drains into Dublin Bay coastal waters. According to the EPA, the water quality of the Dublin Bay coastal waterbody is classified as 'good' and is 'not at risk' based on categorisation for the purposes of the WFD.

- 10.3.3. The first-party appellant states that given the nature of the proposed works, the proximity of the subject site to the River Tolka, and the fact that surface water drainage will be directed to an existing public surface water network that outfalls to the River Tolka, it is considered that there is a short indirect hydrological pathway to South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA. In the absence of mitigation, the first-party appellant considers that there would be potential for dust and surface water runoff from the development site to enter the River Tolka, with potential for downstream impacts on the qualifying interests of neighbouring, downstream European sites. Mitigation measures are considered by the first-party appellant to be required to ensure that dust and contaminated surface water runoff does not enter the River Tolka.
- 10.3.4. Having regard to the information submitted with the subject application, including the Engineering Services Report, the Outline CEMP, the Outline CMP and the Construction and Demolition Waste Management Plan, emissions from the development would be controlled through the use of normal best practice construction site management. The proposed construction management measures outlined in the application are typical and well-proven construction (and demolition) methods and would be expected by any competent developer whether or not they were explicitly required by the terms and conditions of a planning permission. Furthermore, their implementation would be necessary for a residential development on any site, in order to protect the surrounding environs, regardless of proximity or connections to any European site or any intention to protect a European site. I am satisfied that the construction practices set out are not designed or intended specifically to mitigate any potential effect on a European site.
- 10.3.5. I am satisfied that the potential for likely significant effects on the qualifying interests of European sites in Dublin Bay, inclusive of the Tolka estuary area, can be excluded given the absence of a likely pollution source on the site, the considerable

intervening distances and the volume of waters separating the appeal site from European sites in Dublin Bay (dilution factor).

- 10.3.6. In the event that the pollution and sediment-control measures were not implemented or failed during the construction phase, I remain satisfied that the potential for likely significant effects on the qualifying interests of European sites can be excluded given the distant, indirect and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the appeal site from European sites in Dublin Bay (dilution factor).
- 10.3.7. The development would not increase disturbance effects to birds in Dublin Bay, including during construction (and operational) phases, given the separation distance from these sensitive areas across an extensive urban area.
- 10.3.8. The construction phase will not result in significant environmental impacts that could affect European Sites within the wider catchment area.

Operational Phase

- 10.3.9. During the operational stage surface water from the site would be discharged at rates compliant with the Greater Dublin Regional Code of Practice for Drainage Works to the public surface water drainage system after passing through fuel interceptors and various other SUDS. In the event that the pollution control and surface water treatment measures were not implemented or failed, I remain satisfied that the potential for likely significant effects on the qualifying interests of European sites in Dublin Bay can be excluded given the indirect, distant and interrupted hydrological connection, the nature and scale of the development featuring a piped surface water network, including standard control features, and the distance and volume of water separating the appeal site from European sites in the Dublin Bay area (dilution factor).
- 10.3.10. Wastewater would ultimately be treated at Ringsend Wastewater Treatment Plant (WWTP) and the proposed development would result in a residential loading equivalent to approximately 308 residents and 29 patrons for the non-residential units based on the estimated wastewater loading for the development, as outlined in the Engineering Services Report submitted with the application. Having regard to the scale of the development proposed, it is considered that the development would result in an insignificant increase in the loading at Ringsend WWTP, which would in

any event be subject to Irish Water consent, and would only be given where compliance with EPA licencing in respect of the operation of the plant was not breached. Notwithstanding this, water quality is not a target for the maintenance of any of the qualifying interests within the SACs closest to Ringsend WWTP (i.e. South Dublin Bay SAC and North Dublin Bay SAC). Their qualifying interest targets relate to habitat distribution and area, as well as vegetation structure and the control of negative indicator species and scrub. The development would not lead to any impacts upon these qualifying interests, consequent to changes to the physical structure of the habitats or to the vegetation structure that defines their favourable conservation status.

10.3.11. On the basis of the foregoing, I conclude that the proposed development would not impact the overall water quality status of Dublin Bay and that there is no possibility of the operational of the proposed development undermining the conservation objectives of any of the qualifying interests or special conservation interests of European sites in or associated with Dublin Bay via surface water runoff and emissions to water.

In-combination Impacts

10.3.12. This project is taking place within the context of greater levels of construction development and associated increases in residential density in the Dublin area. This can act in a cumulative manner through surface water run-off and increased wastewater volumes to the Ringsend WWTP.

10.3.13. The expansion of the city is catered for through land use planning by the various Planning Authorities in the Dublin area, including the Dublin City Development Plan 2022-2028. The Development Plan has been subject to AA by the Planning Authority, who concluded that its implementation would not result in significant adverse effects on the integrity of any European sites. The proposal would not generate significant demands on the existing municipal sewers for foul water. While this project would marginally add to the loadings to the municipal sewer, evidence shows that negative effects to European sites are not arising. Phased upgrade works to the Ringsend WWTP extension have commenced and the facility is currently operating under the EPA licencing regime that is subject to separate AA Screening.

10.3.14. The development is not associated with any loss of semi-natural habitat or pollution that could act in a cumulative manner to result in significant negative effects to any European site. I am satisfied that there are no projects which can act in combination with the development that could give rise to significant effects to European sites within the zone of influence.

AA Screening Conclusion

10.3.15. The distance between the proposed development site and any European sites, and the very weak ecological pathways are such that the proposal would not result in any likely changes to the European sites that comprise part of the Natura 2000 network in Dublin Bay.

10.3.16. The proposed development was considered in light of the requirements of section 177U of the Act of 2000. Having carried out screening for AA of the project, it has been concluded that the project individually or in combination with other plans or projects, would not have a significant effect on European sites, including European Site No. 004024 (South Dublin Bay and River Tolka Estuary SPA), European Site No. 004006 (North Bull Island SPA), European Site No. 000206 (North Dublin Bay SAC) and European Site No. 000210 (South Dublin Bay SAC) in view of the sites' Conservation Objectives, and Appropriate Assessment is not, therefore, required.

10.3.17. I recognise that the first-party appellant has considered that there would be potential for the proposed development to result in effects on the water quality within European Site No. 004024 (South Dublin Bay and River Tolka Estuary SPA), European Site No. 004006 (North Bull Island SPA), European Site No. 000206 (North Dublin Bay SAC) and European Site No. 000210 (South Dublin Bay SAC), and, as a consequence they concluded that a AA would be necessary, thus instigating the submission of a NIS for the proposed development with the application. Based on my assessment above, it appears that this approach was taken primarily out of an abundance of caution and a Stage 2 AA of the proposed development would not be necessary.

10.3.18. The possibility of significant effects on other European sites has been excluded on the basis of objective information. Measures intended to reduce or avoid significant effects on European sites have not been relied upon in my reaching of a conclusion in this screening process.

11.0 Conclusion and Recommendation

- 11.1. Having regard to the above assessments, I recommend that permission be granted for the proposed development, subject to conditions, and for the reasons and considerations set out in the draft Order below.
- 11.1.1. Finally, 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.

12.0 Recommended Order

Planning and Development Acts 2000 to 2020 as amended

Planning Authority: Dublin City Council

Planning Register Reference Number: LRD6015/22-S3

Appeal by Banner A Cuig Limited c/o Doyle Kent Ltd., 71 Carysfort Avenue, Blackrock, County Dublin, A94 Y3Y0, Ciarán Lawlor & Alana Lawlor of 55 Fairview Strand, Fairview, Dublin 3 and Pauline Murnin and others, c/o 13 Turlough Gardens, Fairview, Dublin 3, against the decision made on the 13th day of December, 2022, by Dublin City Council to grant permission to Banner A Cuig Limited for a proposed Large-Scale Residential Development application subject to conditions.

Proposed Development:

The development will consist of:

- (i) Demolition of existing structures (combined areas of 1,436.41sq.m) comprising single storey dry cleaners at No.59A Fairview Strand (73sq.m) warehouse building (D03PX50) Esmond Avenue (540.34sq.m), warehouse building at No. 21 Esmond Avenue (234.60sq.m), two storey business centre, single storey temporary building and warehouse building at No.19 Esmond Avenue (565.47sq.m) and outbuildings at rear/side No.61/63 Fairview Strand and 59A Fairview Strand (23sq.m), boundary walls and vehicular accesses and gates to Fairview Strand and Esmond Avenue, hoardings to Fairview Strand and Esmond Avenue, and demolitions to the

interior of existing disused underground car park to rear of No's 61 and 63 Fairview Strand;

(ii) Construction of three new apartment blocks:

Block A (2,899.50sq.m) will be five storeys high, with a green roof and roof mounted solar photovoltaic, over existing basement car park and will contain 35 apartments (19 one bedroom and 16 two bedroom) and at ground floor will contain 2 non-residential units including a gymnasium (120.5sq.m) and a shop unit (47.5sq.m) and bin storage structure adjoining southern facade;

Block B (3,963.73sq.m) will step up from two storeys to five storeys with a further fifth floor penthouse, with green roofs and roof mounted solar photovoltaic, over proposed basement (363.34sq.m), and will contain 47 apartments (21 one bedroom and 26 two bedroom) and at ground floor will contain a café unit (59.2sq.m) with signage and electricity substation (13.47 m²);

Block C (2,065.76sq.m) will be three storeys high, with green roof and roof mounted solar photovoltaic, and contain 27 apartments (15 one bedroom and 12 two bedroom), with ground level cycle parking (40 no.) to the rear and to the front (14 no) and bin storage area and ancillary water storage tank to the rear of No.19 Philipsburgh Avenue;

(iii) reinstatement of the 2 houses at No's 61 and 63 Fairview Strand (two storey over ground floor 335.98m²) including front gardens, pedestrian gates and boundary walls and railings, to form 2 number three bedroom apartments at first floor and second floor levels and 2 number one bedroom apartments at ground floor level. The works also include making good the fabric of the buildings, including exterior, interiors and the roof, replacement of pvc windows with timber sliding sash windows and associated works to the curtilage.

(iv) construction of a new extension (176.84sq.m) of three storey scale to the western side of No.63 Fairview Strand incorporating relocated dry cleaner (66.6sq.m) (double storey height) with signage and a two bedroom apartment overhead at top floor level;

- (v) alterations to existing underground car park of 854.86sq.m (constructed per Dublin City Council Reg. Ref. No 3291/07) under proposed Block A, with existing vehicular access to the development via existing Fairview Close underground car park, to contain 26 parking spaces and 2 motor cycle spaces, modified to include cycle parking (46.5sq.m - 68 spaces), bin storage (28.8sq.m) and ancillary including lift and stairs;
- (vi) new basement areas of 363.34sq.m under Block B, containing plant room (51.2sq.m), water storage tank room (54.3sq.m), bin storage (29.3sq.m), cycle parking (102 spaces), electricity meter room (19.0sq.m) and ancillary including lifts and stairs;
- (vii) The development includes provision of 263 cycle parking spaces in total (2 commercial 57 visitor and 204 residential);
- (viii) Balconies/terraces to all apartments;
- (ix) Total open space provision of 1,409.6sq.m including public plaza (82.3sq.m) with 10 cycle spaces and 3 non-standard cycle spaces, to front of new extension to the western side of No.63 Fairview Strand, public plaza (122sq.m) with 12 cycle spaces between Block A and Block B and vehicular access for service vehicles, communal space (144sq.m) to front of No's 61 and 63 Fairview Strand, communal space (237sq.m) to south and west of Block A, communal space (385sq.m) with playground to rear of Block B, communal space (with playground) to rear of Block C (348sq.m) and communal roof garden at 4th floor level Block A (91.3sq.m);
- (x) New pedestrian link from Esmond Avenue to Fairview Close (with access for emergency vehicles);
- (xi) Pedestrian route (gated) from Fairview Strand to Fairview Close, along part of the western side of site (restricted pedestrian right of way);
- (xii) New footpath along Esmond Avenue within site boundary including through No.59A Fairview Strand (site of) and public realm upgrade including new surface treatment of Esmond Avenue and upgraded pedestrian crossing point at junction Esmond Avenue and Fairview Strand;

- (xiii) All enabling and site development works, open spaces, landscaping, paving, boundary treatment, external lighting, plant areas, services provision and connections, drainage and surface water attenuation, waste management facilities and all other ancillary works

at Nos.59A, 61 & 63 Fairview Strand, nos.19, 21 & warehouse Esmond Avenue and rear of 19 Philipsburgh Avenue, Fairview, Dublin 3

Decision

GRANT permission for the above proposed development, in accordance with the said plans and particulars, based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- a) The location of the site within the established urban area of Dublin city with land-use zoning objectives for 'Z1 – Sustainable Residential Neighbourhoods', 'Z10 - Inner Suburban and Inner City Sustainable Mixed-Uses' and 'Z2 - Residential Neighbourhoods (Conservation Areas)' under the Dublin City Development Plan 2022-2028;
- b) The policies and objectives of the Dublin City Development Plan 2022-2028;
- c) The nature, scale and design of the proposed development and the availability in the area of infrastructure;
- d) The pattern of existing and permitted development in the area;
- e) The provisions of Housing for All – A New Housing Plan for Ireland issued by the Department of Housing, Local Government and Heritage in September 2021;
- f) The provisions of Project Ireland 2040 - National Planning Framework, which identifies the importance of compact growth;

- g) The provisions of the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018;
- h) The provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2022;
- i) The provisions of Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009) issued by the Department of Environment, Heritage and Local Government in May 2009;
- j) The provisions of the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of Environment, Community and Local Government in 2019;
- k) The provisions of the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in October 2011;
- l) The provisions of the Planning System and Flood Risk Management Guidelines for Planning Authorities (including the associated Technical Appendices) issued by the Department of Environment, Heritage and Local Government in 2009;
- m) The provisions of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031, which supports compact sustainable growth and accelerated housing delivery integrated with enabling infrastructure;
- n) The submissions and observations received;
- o) The reports from the Planning Authority.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking into

account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment, which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions and observations on file, the information submitted as part of the subject application Appropriate Assessment Screening Report and application documentation, and the Planning Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the Planning Inspector and that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the Conservation Objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Report submitted by the applicant, which contains information set out in Schedule 7A to the Planning and Development Regulations 2001, as revised, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. Having regard to

- the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i), 10(b)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;
- the location of the proposed residential units, a gym, a local retail shop, a dry cleaner's premises and a café on lands zoned within the Dublin City Development Plan 2022-2028 as 'Z1 - Sustainable Residential Neighbourhoods' with a stated objective 'to protect, provide and improve residential amenities', zoned 'Z10 - Inner Suburban and Inner City Sustainable Mixed-Uses' with a stated objective 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses' and zoned 'Z2 - Residential Neighbourhoods (Conservation Areas)' with a stated objective 'to protect and/or improve the amenities of residential conservation

areas, and the results of the Strategic Environmental Assessment of the Development Plan;

- the nature of the existing site and the pattern of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001, as revised;
- the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- the features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction and Demolition Waste Management Plan, the Outline Construction Management Plan, the Outline Construction and Environmental Management Plan, the Archaeological and Architectural Heritage Impact Statement and the Engineering Services Report.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below including those permitting a total of 109 residential units with the redesign of ten residential units to form five residential units, the proposed development would

constitute an acceptable quantum and density of development in this inner-urban brownfield location, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and scale of development, would not detrimentally impact on the built heritage or archaeology of the area, would be acceptable in terms of impacts on traffic, would provide an acceptable form of residential amenity for future occupants, would not be at risk of flooding, or increase the risk of flooding to other lands and would be capable of being adequately served by wastewater and water supply networks.

The Board considered that the proposed development would be compliant with the provisions of the Dublin City Development Plan 2022-2028, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application received by Dublin City Council on the 21st day of October, 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) amalgamation of the two-bedroom apartment 2B-B-02 with the one-bedroom apartment 3B-B-03 on the ground floor to proposed block B and the eight apartments in similar positions on the floors directly above with revised internal layouts compliant with the provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in

December 2022 reducing the overall number of residential units in the proposed development to 109;

- (b) all proposed balconies, terraces and landing lights above ground floor shall be fitted with opaque glazing;
- (c) any assigned high level windows and high screens to balconies shall be at least 1.8m above finished floor level;
- (d) provision of a southern side 1.8m-high screen shall be applied to the terrace serving apartment 13C-C-13;
- (e) provision of landscaping to form defensible space between the footpath serving the communal open space to proposed block B and the northern bedroom window serving apartment 10B-B-04;
- (f) omission of the render finish to sections of the western elevation to proposed blocks A and C to be replaced with a uniform brick finish;
- (g) provision of a second set of demountable bollards or alternative additional physical barrier measures on site along the emergency access route. A staggered maintenance regime shall be implemented to ensure that a minimum of one set of demountable bollards is in situ at all times. Both sets of demountable bollards shall not be removed at the same time except in the event of required emergency access by emergency services vehicles.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interests of visual and residential amenities, the amenities of future residents, and to comply with the objectives of the Dublin City Development Plan 2022-2028.

3. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless

otherwise agreed in writing with the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

4. The applicant shall submit the following architectural conservation details/revisions for the written approval of the Planning Authority prior to the commencement of development:
 - a) Details of materials to be used in the repair of Nos.61 and 63 Fairview Strand to include confirmation of natural (Bangor Blue) or similar roof slates, (cast iron) rainwater goods and external joinery (windows, doors);
 - b) A methodology for addressing the issue of damp within the historic structures, based on an assessment of the levels of existing damp is to be provided by way of written submission.

All works to nos.61 and 63 Fairview Strand shall be carried out in accordance with best conservation practice and the Architectural Heritage Protection Guidelines for Planning Authorities (2011) issued by the Department of Housing, Local Government and Heritage. Any repair works shall retain the maximum amount of surviving historic fabric in situ.

Reason: In order to protect the original fabric, character and integrity of the historic buildings and to ensure that the proposed works are carried out in accordance with best conservation practice.

5. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

6. The internal road network and works along Esmond Avenue serving the proposed development, including junctions, setdown parking space, footpaths and kerbs, shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2019, as amended. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

7. (a) The car parking facilities hereby permitted shall be reserved solely to serve the development on the subject site. Car parking spaces shall not be utilised for any other purpose than those stated in the application, unless the subject of a separate grant of planning permission.

(b) Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these spaces within the development shall be assigned, segregated by use and how car, cycle, motorcycle and car-share club parking, shall be continually managed.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed development.

8. Prior to the occupation of the development, a finalised Mobility Management Plan (Travel Plan) shall be submitted to and agreed in writing with the planning authority. This plan shall include modal shift targets and

shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents of the development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport.

9. A minimum of 10% of all car parking spaces should be provided with electric vehicle charging stations/points, including all car club / car share spaces, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points/stations at a later date.

Reason: To provide for and/or future proof the development such as would facilitate the use of electric vehicles.

10. All plant, including extract ventilation systems, shall be sited in a manner so as not to cause nuisance at sensitive locations due to emissions. All mechanical plant and ventilation inlets and outlets shall be sound insulated and or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations. Basement ventilation shall not be positioned adjacent to apartment terraces.

Reason: In the interests of residential amenity.

11. No additional development shall take place above roof parapet level, including lift motor enclosures, air-handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

12. The developer shall enter into water and waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

13. a) Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
- b) Prior to commencement of development the developer shall submit to the Planning Authority for written agreement a Stage 2 - Detailed Design Stage Storm Water Audit.
- c) Upon Completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed, and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.
- d) A maintenance policy to include regular operational inspection and maintenance of the Sustainable Urban Drainage System infrastructure and the fuel interceptors shall be submitted to and agreed in writing with the Planning Authority prior to the occupation of proposed development and shall be implemented in accordance with that agreement.

Reason: In the interest of public health and surface water management.

14. Public lighting shall be provided in accordance with a scheme, which shall include lighting for the public open spaces, communal spaces, surface cycle parking areas and the pedestrian / cycle routes, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The design of the lighting scheme shall take into account the existing and permitted public lighting in the

surrounding area. Such lighting shall be provided prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

15. No advertisement or advertisement structure shall be erected or displayed on the buildings (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

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

Reason: In the interests of visual and residential amenity.

17. The opening hours for all commercial units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any operations in each respective unit.

Reason: In the interests of residential amenity.

18. A schedule of landscape maintenance shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development. This schedule shall cover a period of at least three years and shall include details of the arrangements for its implementation.

Reason: To provide for the satisfactory future maintenance of this development in the interest of visual amenity.

19. (a) All areas not intended to be taken in charge by the local authority, shall be maintained by a legally-constituted management company.

(b) Details of the legally-constituted management company contract, and drawings/particulars describing the parts of the development for which the legally-constituted management company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation. The management scheme shall provide adequate measures for the future maintenance of public open spaces, roads and communal areas.

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

20. The developer shall facilitate the protection of archaeological materials or features which may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including geotechnical investigations) relating to the proposed development;

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and;

(c) during the demolition and construction period for the proposed development, the protection measures for the Jewish Cemetery boundary wall adjoining the application site, shall be implemented in full, as stated in the document titled 'Photographic record, specification and methodology for the protection, partial reconstruction and repair of the existing historic east wall of the Jewish Cemetery between 63 and 65 Fairview Strand, a protected structure' prepared by Cathal Crimmins and dated the 7th day of May, 2022, excluding any partial construction or repair works to the boundary wall;

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

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

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

- 21.** A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste, and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment and non-residential unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

- 22.** The construction of the development shall be managed in accordance with a final project Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of the construction practice for the development, including:

- a) Location of the site and materials compound(s), including areas identified for the storage of construction refuse;
- b) Location and details of areas for construction site offices, staff facilities, site security fencing and hoardings;
- c) Details of on-site car parking facilities for site workers during the course of construction;

- d) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site.
- e) Measures to obviate queuing of construction traffic on the adjoining road network;
- f) Details of construction phase mobility strategy, incorporating onsite mobility provisions;
- g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- h) Alternative arrangements to be put in place for pedestrians, cyclists and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- i) Details of appropriate measures to mitigate vibration from construction activity in accordance with BS6472: 1992 Guide to Evaluation of Human Exposure to Vibration in Buildings (1Hz to 80Hz) and BS7385: Part 2 1990: Evaluation and Measurement for Vibration in Buildings - Guide to Damage Levels from Ground-Borne Vibration, and for the monitoring of such levels.
- j) Details of appropriate mitigation measures for noise and dust, and monitoring of such levels;
- k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or watercourses;
- n) A record of daily checks that the works are being undertaken in accordance with the final project Construction and Environmental Management Plan shall be kept for inspection by the planning authority;

Reason: In the interest of amenities, public health and safety.

- 23.** Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where proposals have been submitted and agreed in writing with the Planning Authority.

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

- 24.** Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

- 25.** Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an

agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

26. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colm McLoughlin
Senior Planning Inspector

11th April 2023

Appendices

Appendix A: EIA Screening Determination

A. CASE DETAILS		
An Bord Pleanála Case Reference		ABP-315584-23
Development Summary		Demolish buildings and construct 114 apartments and four commercial units in four blocks of three to six storeys, and associated development at nos.59A, 61 & 63 Fairview Strand, nos.19, 21 & warehouse Esmond Avenue and rear of 19 Philipsburgh Avenue, Fairview, Dublin 3.
	Yes/No/N/A	
1. Has an AA screening report or NIS been submitted?	Yes	An Appropriate Assessment Screening Report and Natura Impact Statement were submitted with the application. An Ecological Impact Assessment was also submitted with the application.
2. Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?	No	
3. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA	Yes	SEA and AA were undertaken in respect of the Dublin City Development Plan 2022-2028.

B. EXAMINATION	Yes/ No/ Uncertain	Briefly describe the nature and extent and Mitigation Measures (where relevant) (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact) Mitigation measures –Where relevant specify features or measures proposed by the applicant to avoid or prevent a significant effect.	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain
1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)			
1.1 Is the project significantly different in character or scale to the existing surrounding or environment?	No	There is a clear consistency in the nature and scale of development in the surrounding area, primarily comprising low to mid-rise residential buildings along streets to the south, east and north, alongside apartment complexes immediately to the west of the site. The proposed development would provide for infill development in an inner-urban location that is not regarded as being of a scale or character significantly at odds with the surrounding pattern of development.	No
1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?	Yes	The proposed residential development has been designed to logically address the alterations in topography on site, resulting in minimal change in the locality, with standard measures to address potential impacts on surface water and groundwaters in the locality.	No

<p>1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?</p>	<p>Yes</p>	<p>Construction materials will be typical for an urban development of this nature and scale. The development would provide for revised use of these lands.</p>	<p>No</p>
<p>1.4 Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p>	<p>Yes</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances. Use of such materials would be typical for construction sites. Any impacts would be local and temporary in nature and the implementation of the standard construction practice measures outlined in the Outline CEMP, Outline CMP and Construction and Demolition Waste Management Plan (CDWMP) would satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p>	<p>No</p>
<p>1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Yes</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other similar substances and give rise to waste for disposal. The use of these materials would be typical for construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature, and with the implementation of the standard measures outlined in the Outline CEMP, Outline CMP and CDWMP, the project would satisfactorily mitigate the potential impacts.</p> <p>Operational waste would be managed through a waste management plan to obviate potential environmental impacts. Other</p>	<p>No</p>

		operational impacts in this regard are not anticipated to be significant.	
1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?	Yes	Operation of the standard measures listed in the Outline CEMP and Outline CMP will satisfactorily mitigate emissions from spillages during construction and operation. The operational development will connect to mains services and discharge surface waters only after passing through fuel interceptors and SUDS. Surface water drainage will be separate to foul services within the site.	No
1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?	Yes	There is potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised and short term in nature, and their impacts would be suitably mitigated by the operation of standard measures listed in the Outline CMP.	No
1.8 Will there be any risks to human health, for example due to water contamination or air pollution?	Yes	Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of standard measures within the Outline CMP would satisfactorily address potential risks on human health. No significant operational impacts are anticipated for the piped water supplies in the area.	No

<p>1.9 Will there be any risk of major accidents that could affect human health or the environment?</p>	No	<p>No significant risk is predicted having regard to the nature and scale of the development. Any risk arising from demolition and construction will be localised and temporary in nature. The site is not at risk of flooding. The site is outside the consultation / public safety zones for the nearest Seveso / COMAH sites.</p>	No
<p>1.10 Will the project affect the social environment (population, employment)</p>	Yes	<p>Development of this site would result in an increase in population in this area. The development would provide housing that would serve towards meeting an anticipated demand in the area.</p>	No
<p>1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p>	No	<p>The development would utilise an existing underground structure to the adjoining Fairview Close development, which was granted permission for 123 apartments, a childcare facility, a shop and a commercial unit on a site measuring 0.71ha.</p>	No
<p>2. Location of proposed development</p>			
<p>2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ol style="list-style-type: none"> 1. European site (SAC/ SPA/ cSAC/ pSPA) 2. NHA/ pNHA 3. Designated Nature Reserve 4. Designated refuge for flora or fauna 	No	<p>The nearest European sites are listed in table 5 of this report and other designated sites are referenced in the application AA Screening Report & NIS. Protected habitats or habitat suitable for substantive habituating of the site by protected species were not found on site during ecological surveys. The proposed development would not result in significant impacts to any protected sites, including those downstream.</p>	No

<p>5. Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</p>			
<p>2.2 Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be affected by the project?</p>	<p>No</p>	<p>The proposed development would not result in significant impacts to protected, important or sensitive species.</p>	<p>No</p>
<p>2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>	<p>Yes</p>	<p>The adjoining cemetery and associated gatehouse building are included in the Council's RPS, while the two houses at nos.61 and 63 Fairview Strand on site are included within the NIAH. There is potential for archaeology on site and measures are outlined in the application Archaeological Test Excavation report to address the potential impacts arising.</p>	<p>No</p>
<p>2.4 Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p>	<p>No</p>	<p>No such features are in this inner-urban location, with the site separated from agricultural and marine areas by intervening urban lands.</p>	<p>No</p>
<p>2.5 Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</p>	<p>No</p>	<p>The development will implement SUDS measures to control surface water run-off. The development would not increase risk of flooding to downstream areas with surface water to discharge at greenfield runoff rates. Potential impacts arising from the discharge of surface waters to receiving waters are considered, however, no likely significant effects are anticipated.</p>	<p>No</p>

2.6 Is the location susceptible to subsidence, landslides or erosion?	No	There is a steady change in ground levels across the site. Only shallow excavation works for services, SUDS and a basement are proposed and construction measures can be implemented to safeguard risks to any sensitive receptors.	No
2.7 Are there any key transport routes (e.g. National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?	No	The site is served by a local road network. There are sustainable transport options available for future residents. No significant contribution to traffic congestion is anticipated to arise from the proposed development.	No
2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be affected by the project?	No	No significant construction or operational impacts would be anticipated for other facilities.	No

3. Any other factors that should be considered which could lead to environmental impacts			
3.1 Cumulative Effects: Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?	Yes	The parties to the application and appeal refer to neighbouring planning applications, including residential developments along Richmond Avenue and Fairview Strand. No existing or permitted developments have been identified in the immediate vicinity that would give rise to significant cumulative environmental effects with the subject project.	No
3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?	No	No transboundary considerations arise	No
3.3 Are there any other relevant considerations?	No	No	No

C. CONCLUSION			
No real likelihood of significant effects on the environment.	<input checked="" type="checkbox"/>	EIAR Not Required	
Real likelihood of significant effects on the environment.	<input type="checkbox"/>	Refuse to deal with the application pursuant to section 8(3)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended)	

D. MAIN REASONS AND CONSIDERATIONS
<p>Having regard to</p> <ul style="list-style-type: none"> the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i), 10(b)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022; the location of the proposed residential units, gym, local retail shop, dry cleaner's premises and café on lands zoned within the Dublin City Development Plan 2022-2028 as 'Z1 - Sustainable Residential Neighbourhoods' with a stated objective 'to protect, provide and improve residential amenities', zoned 'Z10 - Inner Suburban and Inner City Sustainable Mixed-Uses' with a stated objective 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses' and zoned 'Z2 -

Residential Neighbourhoods (Conservation Areas)' with a stated objective 'to protect and/or improve the amenities of residential conservation areas, and the results of the Strategic Environmental Assessment of the Development Plan;

- the nature of the existing site and the pattern of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001, as revised;
- the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- the features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction and Demolition Waste Management Plan, the Outline Construction Management Plan, the Outline Construction and Environmental Management Plan, the Archaeological and Architectural Heritage Impact Statement and the Engineering Services Report.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

Inspector: _____ **Colm McLoughlin**

Date: 11th April 2023