



An
Bord
Pleanála

Inspector's Report

ABP-315716-23

Development	Build-To-Rent residential development consisting of 155 apartments with all associated site works and the temporary extension of the opening hours of the existing multi-storey 'Arnotts' Car Park.
Location	97 Middle Abbey St & 16/17 Prince's Street North, D1, 19/25 Prince's Street North, D1 & 98-101 Middle Abbey Street, D1 & 102-107 Middle Abbey Street, D1, & 2-3, 4 & 4A Proby's Lane, D1 & 7/7A and Liffey Street Upper, Dublin 1.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3040/22
Applicant(s)	Fitzwilliam Real Estate Development Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party vs. Refusal
Appellant(s)	Fitzwilliam Real Estate Development Limited

Observer(s)	None
Date of Site Inspection	11 th September 2023 & 25 th September 2023
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The appeal site is located in the north inner city, at ground level the site is located between Middle Abbey Street and Prince's Street North in Dublin 1. Williams Lane links these two streets. The site comprises the top three open-air levels of Arnotts multi-storey car park, airspace over said car park and Arnotts Department Store, a three-storey telecom building fronting Prince's Street North and William Lane, and No. 97 Middle Abbey Street, a five storey mid-terrace building in commercial uses (cafe, retail storage and offices).
- 1.2. The site has a stated area of 0.568ha. The general area can be characterised as commercial with a multitude of services on facilities. Building heights and building mass vary reflecting the evolution of the area and the mix of 19th and 20th /21st century buildings but are generally low rise. In the immediate vicinity Middle Abbey Street is a relatively wide street and building on the northern side mainly date from the twentieth and twenty first centuries some with relatively narrow plot widths and others reflecting large frontages. The contemporary modern Jervis Shopping Centre sits to the west of the site and the Ilac Centre to the north.
- 1.3. The O'Connell Street Architectural Conservation Area is located to the west of the site, the site is not located within the ACA. There are no protected structures within the application site. One protected structure at 94-96 Middle Abbey Street is adjacent to the site. The Arnotts building in Henry Street is a protected structure, though this protection extends only to the upper floor façade, the first-floor cornice detail and the shopfront and does not include the building extending back from Henry Street towards the site. The southern site of the GPO runs along Prince's Street. The National Inventory of Architectural Heritage includes three building within or adjacent to the site, namely 94-96 Middle Abbey Street, 97 Middle Abbey Street, the façade of the Adelphi Cinema on the adjacent site at 102 Middle Abbey Street and no. 108-109 Middle Abbey Street, which adjoining the site.
- 1.4. The site is located within the Zone of Archaeological Constraint for Recorded Monument DU018-020 (Dublin City).
- 1.5. The site is distanced c.280 metres west of O'Connell Street and c. 400m from the Marlborough stop (southbound) serving Luas cross City (green line). The Luas Red

Line runs in an east/west direction along Abbey Street Upper to the south of the site. The site is 215m from the Jervis Luas stop.

2.0 Proposed Development

2.1. In summary, planning permission was sought for the development of a Build-to Rent development consisting of the following:

- The demolition of the telecom building (c.2, 201sq.m) on William's Lane and the top three open-air levels of Arnotts' multi-storey car park (resulting in the loss of 145 no. car parking spaces), and the construction of a Build-To-Rent residential development (c.12,766sq.m) comprising 155 no. apartments as follows:
 - 56 no. studio apartments.
 - 85 no. one-bedroom apartments.
 - 14 no. two-bedroom apartments.
- Communal residential support facilities, amenities and open spaces are also proposed including (c. 459 sq m) (including co-working space, toilets, multimedia room, gyms and exercise studios, dog-washing room, private dining, storage hire, multi-purpose space and communal lounge); residential support facilities (c. 471 sqm) (including entrance foyer and concierge, post room, bicycle storage and bicycle repair station, maintenance rooms / management stores, general storage and bin store).
- The proposed apartment building comprises a two-storey courtyard element over Arnotts' department store, a five-storey courtyard element over Arnotts' car park and a twelve-storey over basement element on William's Lane. A public plaza is to be provided on the William's Lane frontage.
- Permission is also sought to demolish part of the existing basement (c.16sq.m) and second and third floor rear extensions (c.11sq.m) of No. 97 Middle Abbey Street, change the use of the basement from retail storage to café storage, and

convert the first, second, third and fourth floors of the building to 4 no. Build-To-Rent studio apartments.

- Temporary permission (five years) is sought to extend the opening hours of Arnotts' multi-storey car park from 07.00 to 20.00 Monday to Wednesday, 07.00 to 21.00 on Thursday, 07.00 to 20.00 on Friday and Saturday, and 09.00 to 20.00 on Sunday, to 24 hours a day, seven days a week.

2.2. Breakdown of Development by Use:

Use	Proposed sq m
Build-To-Rent Residential Accommodation and Ancillary Facilities (including Basement Level) from Ground Floor Level to Eleventh Floor Level (new build, excluding substation and switchroom) (c. 12,736) and change of use of 97 Middle Abbey Street from First to Fourth Floor Levels (c. 222 sq m))	c. 12,958
Existing Café at Ground Floor Level of 97 Middle Abbey Street (Continued Use)	c. 89
Storage (café) at Basement Level of 97 Middle Abbey Street (Change of use from Retail storage)	c. 112
Electrical sub-station and switchroom at Ground Floor Level at Prince's Street North	c. 30
Existing Car Park from Ground to Fourth Floor Levels (Extension to hours of operation proposed.)	c. 8,340
Total Gross Floor Area	c. 21,529

2.3. Surface water run-off would be minimised by way of Sustainable Urban Drainage Systems including green roofs and permeable paving. Foul wastewater would be treated at Ringsend Wastewater Treatment Plant.

2.4. The Planning Authority sought Further Information on 10th March 2022. DCC approved a three-month extension to the RFI response period on 6th September 2022 extending the six-month response period to 6th December 2022. A response to Further Information was submitted to DCC on 5th December 2022.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By Order dated 11th January 2023, Dublin City Council (DCC) issued notification of a decision to REFUSE permission for the proposed development for the following four reasons:

1. The proposed Build to Rent residential development, which would predominantly comprise one bedroom and studio apartments, would be contrary to Policy QHSN38 of the Dublin City Development Plan 2022-2028 to encourage sustainable residential communities which contain a wide variety of housing and apartment types in accordance with the Housing Strategy and the Housing Need Demand Assessment for the Liberties and North Inner City. Furthermore, the proposed development would be contrary to Policy QHSN40 of the City Development Plan, which states there shall be a general presumption against large scale residential developments which comprise of 100% Built to Rent typology. As such, the proposed development would seriously injure the amenities of the area and would, therefore be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would, due to its excessive scale and height, appear visually incongruous on the skyline when viewed from D'Olier Street and visually obtrusive on the streetscape when viewed from the western end of Middle Abbey Street. As such, the proposed would seriously injure the historic character of the city and would, therefore be contrary to Policy SC22 of the Dublin City Development Plan 2022-2028 to facilitate new development which is in harmony with the city's historical spaces and structures, and the proper planning and sustainable development of the area.

3. The proposed development would, by reason of its excessive height and massing, result in an inadequate standard of daylight and sunlight amenity within individual apartments and the primary communal open space within the development. As such, the proposed development would be contrary to Policy QHSN36 of the Dublin City Development Plan 2022-2028 to provide for high quality apartment development. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

4. The proposed extension of the opening hours of the existing multi-storey car park would, in the absence of the decommissioning of the 145-no. car parking associated with the proposed Build to Rent development, encourage unsustainable travel patterns to and from the city centre. The proposed development would, therefore, be contrary to Policy SMT26 of the Dublin City Development Plan 2022-2028 to discourage commuter parking and to ensure adequate but not excessive parking provision for short-term shopping, business and leisure uses.

3.2. Planning Authority Reports

3.2.1. Further Information

Following the completion of initial reports, DCC issued a further information request. The issues raised in the request can be summarised as follows:

1. Concerns regarding the levels of daylight and sunlight, requested to:
 - (i) Review the design of the deeper (7.5m to 8m) apartment units and set out compliance with in the BRE Guidelines: 'Site Layout Planning for Daylight and Sunlight', or as close as reasonably possible.
 - (ii) Test the remaining 61 no. living/kitchen/dining areas for Annual and Winter Probable Sunlight Hours and provide an assessment of the overall results for the proposed development.
2. (i) Clarification of gross floor area of the ground and upper floors of Arnotts' department store and associated plot ratio.
 - (ii) Consider increasing the width of the courtyard of the proposed two storey block over Arnotts' department store to improve the separation distance achieved between habitable windows.
 - (iii) Confirm the intended use of the 2 no. structures in the courtyard of the proposed two storey block over Arnotts' department store. Address any noise impacts on the adjoining apartment units, identifying appropriate mitigation measures if necessary.
3. Concerns regarding the visual impact of the proposed development on the historic character of the north quays. Request to consider reducing the height of the proposed five storey block over Arnotts' multi-storey car park in this regard. Additional viewpoints requested.

4. Request to test the north facing rooms of all properties on the opposite side of Middle Abbey Street facing the proposed five storey courtyard block for daylight impacts.

3.2.2. Planning Reports

The assessment outlined in the planner's reports is consistent with the decision of the planning authority.

The Dublin City Development Plan 2022-2028 came into force on 14/12/22, subsequent to the RFI submission in respect of this application being made. The response to RFI received was assessed de novo against the policies and objectives of the Development Plan 2022-2028.

The planner's report can be summarised as follows:

- The proposed development would provide for residential accommodation in a central and well serviced part of the city and a more sustainable mix of uses, whilst maintaining existing retail and commercial activity at ground level. Residential uses are acceptable in principle within Zone 5 and should be welcomed in the historic areas of the city, as per Policy QH25 of the City Development Plan cited above, and on the upper floors of vacant and underutilised buildings in particular. With regard to tenure, it is noted that there is not a high concentration of Built-To-Rent (BTR) housing in this part of the city.
- Demolition of vacant telecom building and elements of No. 97 Middle Abbey Street acceptable as buildings not of architectural merit.
- BTR unit mix noted, in particular the high percentage (c.91%) of studio and one-bedroom units are proposed with reference to the Guidelines for Planning Authorities - Sustainable Urban Housing: Design Standards for New Apartments (March 2018).
- Floor plans comply with SPPR3 and Appendix 1 of the guidelines.
- Daylight and Sunlight concerns raised.
- Residential amenities deemed acceptable and in compliance with SPPR 7(b).
- Compliance with SPPR3 and SPPR4

- A public open space requirement of 10% of the site area applies to this site i.e. 568sq.m. A public plaza (c.323sq.m) is proposed adjoining William's Lane and would be animated by the proposed communal ground floor uses. High-quality landscaping proposals have been submitted for same. The applicant is amenable to extending these works into William's Lane subject to agreement with the Council and is also willing to make a financial contribution in lieu of public open space.
- The City Development Plan does not place an upward limit on residential densities. The 282 no. dwellings per hectare proposed here is considered appropriate for a central and accessible location.
- The proposed development would rise to 12 storeys (c.38.2m) in height at the junction of William's Lane and Prince's Street North. The site is located in a low-rise inner-city area that is subject to a 28m building height limit for commercial uses and a 24m limit for residential uses. All elements of the proposed apartment building exceed the City Development Plan building height limits. It should be noted that the previously permitted hotel buildings on the site conformed to the 28m limit for commercial uses.
- Concerns regarding compliance with SPPR 3 of the Urban Development and Building Height Guidelines and visual impact.
- Further information requested as set out in section 3.2.1 above
- In light of the adoption of the City Development Plan 2022-2028, it was noted that whilst the Z5 - City Centre land use zoning objective for the site remains unchanged under the current City Development Plan, Build to Rent residential development is now identified as a separate land use and is open for consideration only on Z5 zoned lands.
- Referring the CDP 2022-2028 it is further stated that the following requirement for unit mix are, is required in these two sub-cities areas; (i) the Liberties and (ii) the North Inner City –
 - A minimum of 15% three or more bedroom units.
 - A maximum of 25%-30% one bedroom / studio units.
- The proposed development would exceed the maximum number of one bedroom / studio units that can be permitted in this instance by 51 no. units and, as such,

would be contrary to policies QHSN38 and QHSN40 of the current City Development Plan in respect of unit mix and delivering long term sustainable communities, which were borne out of the evidence based research that underpins the Housing Strategy of the City Development Plan. For this reason, it is recommended that the proposed development be refused permission.

- The further information response included an updated Daylight & Sunlight assessment and states that 90% of the proposed 272 no. habitable rooms within the development would meet or exceed the BRE recommendations for daylight. 138 no. units (87%) would meet the BRE recommendations for sunlight.
- The report notes the floor area response at sets out that when combined with the area of the proposed development this results in a proposed plot ratio of 5.5:1. Appendix 16 of the current City Development Plan sets an indicative plot ratio of 2.5-3.0:1 for the Central Area of the city.
- The report sets out the response of the appellant to the RFI request. It is noted that the appellant did not propose to revise the design.
- The report concludes that the concerns raised by the planning authority in respect of daylight and sunlight standards and visual impacts have not been satisfactorily addressed by the applicant. Most notably, the applicant has not considered the possibility of reducing the height of the proposed five storey courtyard block which is problematic from both a daylight and sunlight and visual impact perspective.
- Whilst the Transportation Planning Division had no objection to the proposed extended opening hours for the existing multi-storey car park for a temporary period of five years, this was contingent upon the decommissioning of 145 no. car parking spaces arising from the demolition of the top three open-air levels of Arnotts' carpark to facilitate the proposed BTR development. The proposed extended opening hours would otherwise be contrary to Policy SMT26 of the current City Development Plan to discourage commuter car parking and to ensure adequate but not excessive parking provision for short-term shopping, business and leisure uses. It is recommended, therefore, that planning permission be refused for same.
- Drainage Division concerns noted but do not warrant refusal.

- The report recommends that permission should be refused. It is considered that the proposed development would be contrary to the Dublin City Development Plan 2022-2028 and the proper planning and sustainable development of the area.

3.2.3. Other Technical Reports

Drainage Division: In response to the RFI the Drainage Division recommends refusing permission as the proposed development does not include a green blue roof and the applicant has not submitted a Basement Impact Assessment, contrary to the requirements of the Dublin City Development Plan 2022-2028.

Transport Planning Division: Planning Officer's report sets out that a verbal report was received stating that extended opening hours for multi-storey car park would not be acceptable in the event that the decommissioning of the 145 no. car parking spaces associated with the BTR development is refused permission.

Archaeology: No objection subject to conditions.

Environmental Health: No objections.

3.3. **Prescribed Bodies**

National Transport Authority: Set out that the approach to car parking is appropriate given the central location of the site. Concerns raised regarding proposed unit mix which it considers may compromise government investment in transport infrastructure and services.

TII: Conditions safeguarding Luas infrastructure and operations recommended in the event of a decision to grant permission. S.49 supplementary development contribution in respect of Luas Cross City to be levied in the event of a decision to grant permission.

3.4. **Third Party Observations**

None received.

4.0 **Planning History**

Appeal Site

DCC Reg. Ref. 2307/21: Permission granted (June 2021) for extension of existing opening hours of multi-storey car park to 24 hours a day, seven days a week. Condition

No. 2 restricted the permission to two years in order to review the effect of the extended hours. (ABP 310300-21 – Withdrawn)

DCC Reg Ref. 3531/18: Permission granted (September 2018) for demolition of telecom building, decommissioning and demolition of the top three open-air levels of Arnotts' multi-storey car park, and construction of a 257-no. bedroom hotel with ancillary hotel facilities and restaurant uses.

The permitted building comprises a nine storey over basement element fronting William's Lane, a three-storey element over Arnotts' car park and a two storey element over Arnotts' department store and measures c.27.5m at its highest, excluding plant and lift overruns. This permission expires 30th November 2023.

DCC Reg. Ref. 4765/08: Permission granted (Jan 2009) for development on this site of c. 1.86 ha which is bounded to the North by Proby's Lane, Henry Street, the rear of nos. 16-21 Henry Street, the GPO Arcade; to the South by Middle Abbey Street and the rear of nos. 87-90 Independent House (a protected structure), to the East by nos. 16-18 Henry Street, the western boundaries of the GPO Arcade, Prince's Street North, the western boundaries of Penneys; and to the West by Liffey Street Upper and no. 6 Henry Street all at Dublin 1. The development will consist of modifications to permitted Blocks A,B,C, and D (per reg. ref. 5170/06. An Bord Pleanala Ref. PL29N224640).

DCC Reg. Ref. 5170/06 / ABP PL29N.224640: Permission granted (July 2007) for a mixed-use development comprising retail, residential, hotel and associated facilities on a 2.77ha site extending from O'Connell Street to Liffey Street Upper and Henry Street to Middle Abbey Street including, inter alia, Arnotts' department store and multi-storey car park, Pennys' department store, Independent House and several other properties on Middle Abbey Street and Liffey Street Upper. The proposed development comprised four main blocks ranging in height from three storeys to twelve storeys (generally six to eight storeys) with retail and residential uses in Blocks A, B and D.

Planning History in the Vicinity

Jervis Street Shopping Centre

DCC Reg. Ref. 2479/20: Permission granted for development primarily comprising: i. 24 no. Built-To-Rent apartment units on two floors at car park levels 3 and 4 fronting

Jervis Street and Abbey Street Upper. ii. Demolition of retail floor area, storage and car parking facing Mary Street and mansard surrounds facing Mary Street, Jervis Street and Abbey Street Upper and construction of a six-storey building behind Mary Street frontage from first floor upper level to car park level 5 for use as a co-living development containing 127 no. units. iii. Construction of three floors above the roof of car park level 5A for office use.

Abbey Cottages Hostel, Middle Abbey Street

DCC Reg. Ref. 3804/19/ ABP 305853- 19: Permission granted (March 2020) by An Bord Pleanála for the demolition of the 3-storey commercial unit, modifications to a previously permitted development (DCC Reg. Ref. 2971/17/ABP Ref. PL29N.249037, DCC Reg. Ref. 2954/18). The proposed development will result in the increase of the total number of rooms from 127 rooms to 151 rooms.

East of Chapter House, Abbey Street Upper

DCC Reg. Ref. 3232/19/ ABP305280- 19: Permission granted (December 2019) by An Bord Pleanála (ref. 305280- 19) for amendments to a permitted nine storey hotel building at No. 31-34 Abbey Street Upper to provide for, inter alia, an additional two storeys, and amendments to a permitted nine storey aparthotel at No. 42-51 Great Strand Street including, inter alia, an additional storey.

5.0 Policy Context

5.1. National & Regional Policy / Guidance

5.1.1 The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains several policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints;
- NPO 4 promotes attractive, well-designed liveable communities;
- NPO 6 aims to regenerate cities with increased housing and employment;

- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards;
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking;
- NPO 27 promotes the integration of safe and convenient alternatives to the car into the design of communities;
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location;
- NPO 35 encourages increased residential density through a range of measures, including site-based regeneration and increased height.

5.1.2 Following the theme of ‘compact urban growth’ and NPO 13 of the NPF, the 2018 **Urban Development and Building Heights, Guidelines for Planning Authorities** (hereafter referred to as the ‘Building Heights Guidelines’) outlines the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF.

5.1.3 **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)** (hereafter referred to as the ‘Sustainable Residential Development Guidelines’) sets out the key planning principles which should guide the assessment of planning applications for development in urban areas.

5.1.4 The **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020, updated December 2022 and July 2023)**, hereafter referred to as the ‘Apartment Guidelines’ sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking. The Guidelines were updated on the 22nd of December 2022, by Circular NRUP 07/2022, this was subsequently superseded by Section 5.1 of the 2023 Guidelines which clarifies that appeals that are subject to consideration within the planning system on or before 21st December 2022, will be considered and decided in accordance with the 2020 version of the Apartment Guidelines, that include SPPRs 7 and 8. The 2020 version will therefore apply in this case.

5.1.5 The **Architectural Heritage Protection Guidelines for Planning Authorities**, hereafter referred to as the ‘Architectural Heritage Guidelines’, sets out detailed

guidance to support planning authorities in their role to protect architectural heritage when a protected structure, a proposed protected structure or the exterior of a building within an ACA is the subject of development proposals. It also guides those carrying out works that would impact on such structures.

5.1.6 The **Regional Spatial and Economic Strategy (RSES)** for the Eastern and Midlands area (adopted June 2019) provides a framework for development at regional level. The appeal site has been included within the Dublin Metropolitan Area (MASP) and is therefore part of the area identified for 'consolidation of Dublin City and suburbs'.

5.2. **Dublin City Development Plan 2022-2028**

5.2.1. The DCC decision was made under the Dublin City Development Plan 2022-2028 which was adopted on the 2nd of November 2022, and it came into operation for this area as of the 14th of December 2022.

Zoning

The site appeal site is zoned Z5 'City Centre', the objective for which is '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*'. The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development which create a sense of community, and which sustain the vitality of the inner city both by day and night, subject to noise reduction measures. Build to Rent residential development is now identified as a separate land use and is open for consideration only on Z5 zoned lands.

There are no Protected Structure identified within the site. The following Built Heritage/Cultural Heritage are within the vicinity:

- No. 94-96 Middle Abbey Street (Abbey Chambers), a five storey commercial building located to the east of the subject site, is a Protected Structure (RPS No. 19).
- No. 87-90 Middle Abbey Street (Independent House), a five storey commercial building located further east again, is also a Protected Structure (RPS No. 18).
- It is proposed to add No. 91-92 Middle Abbey Street, a five storey commercial building constructed as an extension to Independent House, to the Record of

Protected Structures under the current draft City Development Plan (2022-2028).

- The General Post Office (GPO) is located c. 80m to the northeast of the site (RPS. No. 6010).
- The O'Connell Street Architectural Conservation Area is located c.10m east of the site and extends from Parnell Street to College Green.
- The site is located within the Zone of Archaeological Constraint for Recorded Monument DU018-020 (Dublin City).

Strategy

5.2.2. The overarching strategic approach of the plan is to develop a low carbon, sustainable, climate resilient city. The housing demand calculated sets a requirement for the development plan to provide for approximately 40,000 housing units between 2022 and 2028.

Climate

5.2.4. Chapter 3 deals with 'Climate Action' and sets out a strategic approach to integrate climate mitigation and adaptation principles in order to ensure that Dublin becomes a low carbon and climate resilient city. In summary, relevant policies and objectives relating to sustainable settlement patterns, the built environment, and sustainable transport include the following:

CA3 - Support the transition to a low carbon, climate resilient city by seeking sustainable settlement patterns, urban forms and mobility.

CA4 - Support retrofitting of existing built-up areas including reopening closed walking and cycling links and providing new links.

CA6 - Promote and support the retrofitting and reuse of existing buildings rather than their demolition and reconstruction where possible.

City Shape & Structure

5.2.5. Chapter 4 sets out the overarching framework and strategy to guide the future sustainable development of the city. The vision for the urban form and structure of the city is to achieve a high quality, sustainable urban environment, which is attractive to residents, workers and visitors. In summary, relevant policies and objectives include the following:

SC1 - Consolidate and enhance the inner city, promote compact growth and maximise opportunities provided by existing/proposed public transport by linking the critical mass of existing and emerging communities and other regeneration areas.

SC2 – Aims to develop the city’s character.

SC3 – Promotes mixed-uses in the city centre, including high-quality, sustainable residential development and conversion of office / over-shop spaces.

SC5 – Promotes good urban design and architectural principles.

SC10 – Ensure appropriate densities in accordance with national policy.

SC11 - Promote compact growth through consolidation and intensification of infill and brownfield lands, particularly on public transport corridors.

SC12 - Promote a variety of housing and apartment types and sizes, as well as tenure diversity and mix.

5.2.6. Section 4.5.4 deals with increased building height and outlines that Appendix 3 sets out specific guidance regarding the appropriate locations where enhanced density and scale including increased height will be promoted. Appendix 3 also outlines performance criteria for the assessment of such development and details the different classifications of building height in the city. The spatial approach is generally to protect the vast majority of the city as a predominantly low-rise city, including established residential areas and conservation areas within the historic core, while also recognising the potential and the need for taller landmark buildings to deliver more sustainable compact growth, including areas identified for large scale regeneration and redevelopment. In summary, relevant policies and objectives include the following:

SC14 – Strategic approach to accord with the Building Height Guidelines.

SC15 – Promotes a mix of uses in large scale development with increased height.

SC16 – Recognises the need for increased building height in identified locations, subject to the protection of existing amenities and sensitivities.

SC17 – Sets out guidance for proposals with increased scale/height in order to protect and enhance the skyline of the city.

SC18 - Promote a co-ordinated approach to the provision of landmark/tall buildings.

5.2.7. Sections 4.5.5 and 4.5.6 of the Plan set out policies and guidance in relation to Urban Design, Architecture, and the Public Realm.

Housing

5.2.8. Chapter 5 deals with 'Quality Housing and Sustainable Neighbourhoods' and the strategic approach aims to deliver quality homes and sustainable communities in the compact city. The following policies are included:

QHSN36 - High Quality Apartment Development

QHSN37 - Houses and Apartments

QHSN38 - Housing and Apartment Mix –To encourage and foster the creation of attractive, mixed use, sustainable residential communities which contain a wide variety of housing and apartment types, sizes and tenures, in accordance with the Housing Strategy and HNDA, with supporting community facilities and residential amenities.

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

QHSN40 - Build to Rent Accommodation – To facilitate the provision of Built to Rent (BTR) Accommodation in the following specific locations:

- Within 500 metre walking distance of significant employment locations,
- Within 500 metres of major public transport interchanges (e.g. Connolly Station, Tara Street Station and Heuston Station), and
- Within identified Strategic Development Regeneration Areas.

There will be a general presumption against large scale residential developments (in excess of 100 units) which comprise of 100% BTR typology. To ensure there are opportunities for a sustainable mix of tenure and long term sustainable communities, a minimum of 60% of units within a development must be designed as standard apartments in accordance with the requirements set out in the Sustainable Urban Housing: Design Standards for New Apartments, December 2020

There will be a presumption against the proliferation and over concentration of BTR development in any one area. In this regard, applications for BTR developments

should be accompanied by an assessment of other permitted and proposed BTR developments within a 1km radius of the site to demonstrate:

- that the development would not result in the overconcentration of one housing tenure in a particular area and take into account the location of the proposed BTR.
- how the development supports housing need, particularly with regard to tenure, unit size and accessibility with particular reference to the Dublin City Council Housing Need and Demand Assessment

In addition, Chapter 5 outlines a range of policies and objectives aimed at promoting regeneration, urban consolidation, densification, and healthy placemaking. A core objective of the plan is to promote the realisation of the 15-minute city, which envisages that people should have the ability to access most of their daily needs within 15 minutes on foot or bike from where they live. It promotes a range of house types and tenure to cater for social inclusion and particular housing needs. The Plan also promotes high-quality standards and design for housing and apartments developments, including high standards of residential amenity, housing mix, and social/community infrastructure. It recognises the importance of schools as essential social infrastructure and the need to align demographics with educational provision.

The City Centre and Retail

- 5.2.9. Chapter 7 aims to support and promote the city centre, urban villages, and retail. The appeal site immediately adjoins the 'city centre retail core' and designated category 2 shopping streets adjoining Henry Street which is a designed Category 1 shopping Street. Figure 7.2: Dublin City Centre Retail Core, Principal Shopping Streets

Transport

- 5.2.10. Chapter 8 deals with 'Sustainable Movement and Transport' and presents an integrated strategy that supports and prioritises the use of sustainable modes of transport and promotes active travel and a pro-active and collaborative approach to influencing travel behaviour. Objective SMT01 aims for travel mode share targets of 26% walking/cycling/micro mobility; 57% public transport (bus/rail/LUAS); and 17% private (car/ van/HGV/motorcycle).
- 5.2.11. The Plan aims towards the effective integration of land use and transportation and encourages higher-density development along public transport routes. It also aims to

improve the public realm and accessibility for all, including more quality space for pedestrians in the city centre. Policy SMT20 promotes walking and cycling for school trips and aims to prioritise school routes for permeability projects and provision and enhancements of pedestrian and cycle ways.

- 5.2.12. Section 8.5.9 highlights the need to keep all road users interacting safely and efficiently, as is supported in policies SMT 33, SMT 34, and SMT 35.

Built Heritage and Archaeology

- 5.2.13. Chapter 11 recognises the importance of protecting built heritage and archaeology in quality place-making and urban design. The strategic approach aims to protect these heritage assets primarily through sensitive development and high-quality architecture; the inclusion of structures on the Record of Protected Structures (RPS); the designation of Architectural Conservation Areas and Areas of Special Planning Control; safeguarding zones of archaeological interest; implementing the City Heritage Plan; and promoting the re-use of heritage buildings. Relevant policies and objectives can be summarised as follows:

BHA2 – To conserve and enhance Protected Structures and their curtilage.

BHA3 – Resist the total/substantial loss of Protected Structures.

BHA5 - Presumption against the demolition or substantial loss of any building or other structure assigned a 'Regional' rating or higher by the National Inventory of Architectural Heritage (NIAH).

BHA6 - Presumption against the demolition or substantial loss of any building or other structure which appears on historic maps up to and including the Ordnance Survey of Dublin City, 1847.

BHA7 - Protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA).

BHA8 - Presumption against the demolition or substantial loss of a structure that positively contributes to the character of an ACA.

BHA9 - Protect the special interest and character of all Dublin's Conservation Areas.

BHA10 - Presumption against the demolition or substantial loss of a structure that positively contributes to the character of a Conservation Area.

BHA11 – Supports the rehabilitation and reuse of existing older buildings.

BHA15 - Encourage the appropriate development of exemplar twentieth century buildings and structures to ensure their character is not compromised.

BHA26 – Aims to protect and preserve archaeological heritage.

Development Management

5.2.14. Chapter 15 sets out the standards and criteria to be considered in the development management process, as well as the information to be submitted for various applications. Relevant aspects include the following:

15.4 – Key Design Principles aim for high quality sustainable and inclusive urban design and architecture befitting the city's environment and heritage and its diverse range of locally distinctive neighbourhoods.

15.5.1 - Refers to the development of brownfield, regeneration and large comprehensive sites which are of sufficient scale to differentiate them from the surrounding townscape.

15.5.2 - Infill development should respect and enhance its context and be well integrated with its surroundings, ensuring a more coherent cityscape.

15.5.5 – Higher density will be supported subject to suitable context and design.

15.7.1 – Encourages the reuse of existing buildings where possible.

15.8 - Sets out the general requirements for residential development followed by more specific guidance for apartments, Build to Rent, student accommodation and houses.

15.9.1 - Unit mix requirements for the Liberties and the North Inner City are set out in Section 15.9.1 and Table 37 of the Housing Strategy in Appendix 1

15.15.1.10 – Sets out guidance in relation to piling and archaeology.

Appendices

5.2.15. The Development Plan includes a number of relevant appendices, including the following:

Appendix 1 contains the Housing Strategy.

Appendix 2 contains the Retail Strategy.

Appendix 3 'Achieving Sustainable Compact Growth' outlines policy and criteria in relation to building height, density, plot ratio, and site coverage.

Appendix 5 'Transport and Mobility' expands on the Sustainable Movement and Transport framework and sets out technical development standards which are applicable to all developments.

Appendix 6 outlines further detail on Conservation.

Appendix 9 outlines Basement Development Guidance.

Appendix 16 outlines guidance and standards in relation to 'Sunlight and Daylight'.

5.3. Natural Heritage Designations

The river Liffey is located 150m south of the site. The nearest Natura 2000 site is North Bull Island SPA at a distance of 2.5km and the South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA at a distance of c. 3.5k and 3.6km respectively. There are several other Natura 2000 sites within the wider Dublin Bay area.

5.4. Preliminary Examination Screening for Environmental Impact Assessment

- 5.4.1. An Environmental Impact Assessment (EIA) Report screening was submitted with the application setting out that mandatory EIA would not be required and that a sub-threshold EIA is not triggered. This document does not constitute a Schedule 7A Screening Report. I have carried out the following preliminary examination screening for completeness.
- 5.4.2. With regard to EIA thresholds, Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - 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. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)
- 5.4.3. Class 14 of Schedule 5 relates to 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.

- 5.4.4. Class 15 of Schedule 5 relates to any project listed in Part 2 of Schedule 5 which does not exceed a quantity, area or other limit specified in Part 2 in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.
- 5.5. A detailed description of the development is outlined in section 2 of this report. In summary, it is proposed to demolish all existing structures on site (2,228m²) and to construct a housing development of 155 no. 'Build to Rent' apartments. Therefore, the maximum number of dwellings proposed is significantly below the threshold of 500 dwelling units.
- 5.6. The site has an overall area of c. 0.568ha and a detailed description is outlined in section 1 of this report. The site is zoned 'City Centre - Z5' in the Dublin City Development Plan with an objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. The predominant use in the area is commercial with some residential and community uses. Based on the zoning and predominant land uses the site can be considered to fall within a business district. However, the site size is significantly below the applicable threshold of 2 ha for a 'business district'.
- 5.7. As outlined above, the criteria at Schedule 7 to the Planning and Development Regulations 2001 (as amended) are relevant to the question as to whether the proposed sub-threshold development would be likely to have significant effects on the environment that should be the subject of environmental impact assessment.
- 5.8. The site is comprised of existing buildings (to be demolished) and 'air space' above existing structures and is largely surrounded by commercial and some residential developments of varying scale. Residential/commercial use is already established in this area and is supported under the zoning objective. The introduction of additional residential development will not have an adverse impact in environmental terms on surrounding land uses.
- 5.9. The proposed development will not increase the risk of flooding within the site. The development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The development is served by

municipal drainage and water supply. The site is not subject to a nature conservation designation and does not contain habitats or species of conservation significance. The AA Screening set out in Section 8 of this report concludes that the potential for adverse impacts on Natura 2000 site can be excluded at the screening stage.

- 5.10. Regarding impact on cultural heritage, noting the adjoining ACA and Protected Structures, a Townscape and Landscape Visual Impact Assessment and a Conservation Assessment accompanied the planning application. The impact on Architectural Heritage has been addressed in terms of the application and the information submitted by the applicant identified that and that no significant adverse direct, indirect or cumulative effects on are likely to arise. I have addressed this matter in more detail in section 7.4 of this report.
- 5.11. Having regard to the nature, scale, and location of the proposed development, and the environmental sensitivity of the geographical area, I do not consider 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 the impact of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency or reversibility. In these circumstances and having regard to the criteria in Schedule 7 of the Regulations, I conclude that the proposed sub-threshold development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case.

6.0 The Appeal

6.1. First Party Appeal

The applicant has appealed the decision of DCC to refuse planning permission for 4 no. reasons for refusal. The grounds of appeal can be summarised under the following headings:

Refusal Reason No. 1: 100% Build to Rent Typology

- Referencing Policy QHSN38 and QHSN40 of the CDP 2022-2028 it is set out that the development plan has no regard to national policy.

- It is set out that the BTR scheme is in accordance with the Sustainable Urban Housing: Design Standards for New Apartments 2020 and the Dublin City Development Plan 2016-2022, both of which were in place at the time of the lodgement of the planning application.
- The Guidelines SPPR's take precedence over any conflicting development plan policies and objectives.
- It is submitted that the Planning and Environmental Report, dated 12th January 2022 outlines each relevant SPPR and how the apartment element responds to each.
- The CDP 2022-2028 came into effect on 14th December 2022 and the Apartment Guidelines 2022 came into effect 22nd December 2022.
- The appeal highlights Section 5.5 of the Apartment Guidelines 2022 which includes *"Given the quanta of development delivered and permitted to date, there is no longer a planning rationale to have BTR as a distinct development type for planning purposes, i.e. that is specifically identified as such as part of the planning process with its own flexible design standards"*. It is argued that this means BTR is still recognised as a residential development type but won't have the benefit of being able to avail of distinct planning criteria.
- It is set out that the 2020 Guidelines should be used to assess the BTR element of the development not the 2022 Guidelines as per Transitional Arrangements, Part B of Circular NRUP 07/2022.
- The 2020 Apartment Guidelines takes precedence over development plans where policy conflicts arise by reference to Section 1.19 and 1.20 of the 2020 Apartment Guidelines.

1.19 These guidelines have been issued by the Minister for Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines and are also required to apply any specific planning policy requirements (SPPRs) of the guidelines, within the meaning of Section 28 (1C) of the Planning and Development Act 2000 (as amended) in carrying out their functions.

1.20 Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements.

- There is clear conflict between the current 2022-2028 development plan and the 2020 apartment guidelines. The LA were required to apply the 2020 guidelines and it is contended that policies QHNA38 and QHNS40 do not apply to the subject scheme.
- BTR development plan policies should be set aside.
- In the event the Board does not agree it is set out that policy QHSN38 refers to section 15.9.1 and table 37 of the Housing Strategy. On one hand elements of section 15.10 table 37 refers, *inter alia*, to SPPR 8 and the specific relaxations that can be applied to BTR schemes; on the other hand, section 15.9.1 and table 37 provides prescriptive requirements regarding unit mix.
- It is argued that the development complies inherently with National Policy Objective 3a and 3b and NPO 35 noting that BTR has the potential to accelerate the delivery on new housing stock.
- A *Built to Rent* justification report (3rd February 2023) in accordance with Policy QHSN40 prepared and find “a higher demand for smaller household sizes” in the area.
- The location of the site complies with two of the three locational requirements for BTR as set out in QHSN40. Whilst not located in a Strategic Regeneration Area it is set out that there are only three SDRA’s located within 500m of major public transport interchange, limiting BTR schemes significantly.
- There are no locational restrictions on BTR scheme in the 2020 apartment guidelines.
- The scheme is fully compliant with the Apartment Guidelines 2020 with 75 no. of the 159 no. apartments oversized by 10%.
- BTR tenure subject to covenant or legal agreement controls.

- *Built to Rent* justification report (3rd February 2023) identified 2 no. permissions for BTR development with 1 km of the site permitting total of 82 no. units. As such there is not a large number of BTR developments permitted within the area.
- Conclusion – the development is not inconsistent with policies QHSN38 and QHSN40 of the 2022-2028 Development Plan.

Refusal Reason No. 2 – Visual Impact

- Whilst the applicant was afforded the opportunity at RFI to reduce the height and scale of the 5 storey elements over Arnotts Car Park, it was decided not to make any changes.
- It is set out that this would have made the scheme; economically unviable and would have resulted in a less sustainable use of this extremely accessible centrally located city centre site.
- The scheme removes a low-scale vacant building (eircom) replacing it with a 12-storey form, the preferred approach as per the CDP 2022-2028 section 15.4.3.
- The scheme has been designed by a range of experts and the design reflects sustainable and low-energy strategies.
- The Building Height Guidelines 2018, the NPF and the CDP 2022-2028 recognise the importance of height in delivering compact growth.
- Referencing the LVIA 4 no. viewpoints namely O (D'Olier Street), P (Middle Abbey Street at Liffey Street), Q (Middle Abbey Street opposite Arnotts) and R (Middle Abbey Street looking northwest) which are categorised as 'moderate to significant' in terms of potential impact, it is set out that despite the categorisation, the LVIA states that - generally given the extent of new and emerging development in the immediate area the development may be regarded as being consistent with existing and emerging trends, therefore giving rise to moderate landscape and visual effects. Scheme setback highlighted.

- Reference is made to precedents in the area including Jervis Shopping Centre (DCC 2479/20).
- It is set out that the planner's report raised no concerns regarding the architectural quality, principle of design and palette of materials and the impact can be subjective. It is submitted that the area has capacity to absorb the development. Refer the Board to *Visual Impact Assessment Addendum* report dated February 2023 which includes that "*the city has capacity to absorb an innovative residential development on top of Arnotts*",
- The submission includes a table setting out a response to the performance-based criteria use in assessing urban schemes of enhance density scale – Table 3 of Appendix 2 of the CDP 2022-2028. It is submitted that the scheme is fully in accordance with the objectives listed.
- Further to DCC notification to refuse the design team explored alternative materials to reduce the visual impact. Revised proposals have been submitted to lighten the scheme to include revised light colour cladding panels and additional glass. The appellant suggests the Board consider these as minor changes.
- Relevant precedent development cited.
- Conclusion - The scheme will not result in any adverse visual impact.

Refusal Reason No. 3 – Daylight and Sunlight Amenity

- It is submitted that the PA have not applied a degree of flexibility to the scheme from a sunlight and daylight perspective having regard to the updated BRE guidelines.
- Given the site context of seeking to deliver a high-density apartment development in this historic built-up area of Dublin 1, which is lacking in dwellings, it is considered appropriate that a degree of flexibility should be used.
- The response to RFI included an updated Daylight and Sunlight report: internal Daylight, Sunlight and Overshadowing Williams' Lane, Dated 1st December 2022, which assessed the scheme in accordance with updated BRE guidance.

- In support of the appeal the response refers the Board to the Daylight and Sunlight Report dated 11th February 2023. In summary, the report demonstrates why there is no technical basis for concerns particularly when the results are compared against other Dublin City centre schemes.
- It is set out that while 5% of the overall development, 3% when excluding the repurposed No. 97 Middle Abbey Street fall short of the recommended levels of daylight, they are considered to be adequately lit for the main use as living rooms. The response notes the compensatory measures in the scheme such as public transport proximity, amenities and quality open spaces, storage provisions, views, protection from noise nuisance etc.

Refusal Reason No 4 -Car Park Opening Hours Extension

- Request that the Board assess the car park opening hours independent of the proposed development.
- Existing extant precedent exists for the extension under DCC 2307/21. Notable, condition no. 2 stipulated a temporary permission for a period of two years from the date of the final grant (expired 2nd July 2023). This permission has not been implemented and permission is being sought for the same development for a temporary period of 5 years.
- Referring to policy SMT 26, It is set out that the extant permission (now expired) was permitted in the absence of the requirement to decommission spaces.
- The primary factor for the request is the presence of a large number of hotels in the area which do not have the benefit of safe and secure parking.
- While business continue to recover after the pandemic it is too early to determine if permanent modal shift has occurred.
- The temporary permission will allow the LA time to reassess the appropriateness of the development.
- Reduction in on-street car parking for public enhancements, pedestrianisation initiatives increase the importance of the provision of round the clock off street parking facilities in facilitating parking and assessable parking.

- It is set out that the proposals seeks 24-hour access over a 7 day period, which would be more aimed towards visitors to the city for leisure and tourism purposes.
- In the event the residential element is granted, no car parking spaces are proposed to be dedicated solely to the future residents.
- It is not anticipated that the proposed opening hours would result in an increase in regular commuting traffic.

Overall Conclusions

- The proposed development complies fully with the zoning objectives, standards, policies, and recommendations of a Dublin City Development Plan 2022-2028
- The development complies with national and regional policy guidance.
- The development would result in the provision of much needed residential units in the city centre in a time of unprecedented housing crisis.

6.2. Planning Authority Response

None.

6.3. Observations

Transport Infrastructure Ireland (TII) – In their submission received 22nd February 2023 TII reiterate conditions safeguarding Luas infrastructure and operations recommended in the event of a decision to grant permission and in the event of a decision to grant permission a S.49 supplementary development contribution in respect of Luas Cross City to be levied.

7.0 Assessment

7.1. Introduction

- 7.1.1. Having inspected the site and examined the application details and all other documentation on file, including all of the submission received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues in this appeal are those raised in the reasons for refusal and can be addressed as follows:

- The Principle of Development
- Housing Typology- BTR
- Building Height/Scale, Heritage and Visual Amenity
- Daylight and Sunlight
- Car Parking - Hours of Operation
- Other Matters - Drainage

Note: The attention of the Board is drawn to the fact that The Apartment Guidelines were updated in July 2023, subsequent to the planning application being lodged with Dublin City Council on 5th December 2022. The most recent update in July 2023 Guidelines do not include Specific Planning Policy Requirements (SPPRs) 7 and 8, which relate to BTR development. However, of relevance to this application are the transitional arrangements set out in Section 5.10 of the Apartment Guidelines 2023 which states: *“All current appeals, or planning applications (including any outstanding SHD applications and appeals consequent to a current planning application), that are subject to consideration within the planning system on or before 21st December 2022, will be considered and decided in accordance with the current version of the Apartment Guidelines, that include SPPRs 7 and 8”*. The following assessment is therefore based on the 2020 Apartment Guidelines.

Note: The original planning application was lodged with DCC on 12th January 2022. The DCC decision was made under the Dublin City Development Plan 2022-2028 which was adopted on the 2nd of November 2022, and it came into operation for this area as of the 14th of December 2022.

7.2. The Principle of Development

Demolition

- 7.2.1. The proposal involves the demolition of the three storey Eircom structure at the rear of 97 Middle Abbey Street and the top three levels of Arnotts car park. The Architectural Design Appraisal submitted with the application states that the design makes use of an underutilised roof car park at the top of Arnotts car park which also stretches across the top part of the Arnotts store. The car parking at roof level and the uppermost levels of the car park structure will be removed to allow for an ‘air rights’

development over these properties that extends across and down onto the Eircom site at ground level.

- 7.2.2. The Eircom building has been redundant as a functional telecom building for a number of years and in use most recently as additional storage for Arnotts. This building presents blank walls and services doors onto both Williams Lane and Prince's Street north at ground level. Neither the Eircom building or the car park levels are considered to be on architectural merit. None of the structures are included within the RPS, an ACA, or the NIAH.
- 7.2.3. Notwithstanding the absence of built heritage designations on site, I acknowledge that Development Plan provisions (including 15.7.1, CA6, and BHA6) support the retention and reuse of older buildings of significance in the interests of protecting local character and climate action. I am satisfied that the demolition of the on-site buildings does not raise potential for the loss of significant local character. From a climate action/energy perspective, I acknowledge the 'embodied carbon' implications associated with the demolition and reconstruction of a new development. However, this must also be balanced with the wider sustainability issues associated with the proposed development and the wider policy objectives for the area. The proposed scheme will widen Williams Lane and provides for a new entrance to the scheme on the corner of Williams Lane and Prince's Street, activating the façade and the street frontage.
- 7.2.4. In conclusion, I acknowledge that the proposal involves the demolition of all existing buildings/structures on site. Collectively however, I am satisfied that the existing buildings are not of significant heritage or local character value, this is the case also for the car parking levels, and I do not consider that their retention could be reasonably required as part of a comprehensive redevelopment of the site. I acknowledge the additional resources and energy associated with new development. However, I consider that demolition is justified in this case in light of the overarching needs to achieve higher-density, compact, sustainable development in accordance with the over-arching aims of the National Planning Framework. Accordingly, I have no objection in principle to the demolition of the existing buildings.

Zoning

- 7.2.5. The appeal site is zoned Z5 'City Centre', the objective for which is '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen*

and protect its civic design character and dignity'. The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development which creates a sense of community, and which sustains the vitality of the inner city both by day and night, subject to noise reduction measures. Build to Rent residential development is now identified as a separate land use and is open for consideration only on Z5 zoned lands.

Density

- 7.2.6. The City Development Plan does not place an upward limit on residential densities. The 282 no. dwellings per hectare proposed here is considered appropriate for a central and accessible location. The PA raise no concerns in this regard.

Conclusion

- 7.2.7. The Development Plan confirms that 'Build to Rent' is open for consideration in this zoning. In this regard, I note that there is a vibrant mix of existing and permitted uses within the wider area to cater for residential development. The provision of city centre residential development would sustain vitality and viability within the centre of the city, which would help to create a sense of place and community. This would be consistent with the Z5 zoning objective for the area.

7.3. **Housing Typology – BTR**

Refusal Reason No. 1

- 7.3.1. The proposed development consists of 100% Build-to Rent units. Refusal reason no. 1 of the DCC notification stipulated that *the proposed Build to Rent residential development, which would predominantly comprise one bedroom and studio apartments, would be contrary to Policy QHSN38 of the Dublin City Development Plan 2022-2028 to encourage sustainable residential communities which contain a wide variety of housing and apartment types in accordance with the Housing Strategy and the Housing Need Demand Assessment for the Liberties and North Inner City. Furthermore, the proposed development would be contrary to Policy QHSN40 of the City Development Plan, which states there shall be a general presumption against large scale residential developments which comprise of 100% Built to Rent typology. As such, the proposed development would seriously injure the amenities of the area*

and would, therefore be contrary to the proper planning and sustainable development of the area.

Policy Context

- 7.3.2. As set out above this planning application was lodged with Dublin City Council on 12th January 2022. The DCC decision was made under the Dublin City Development Plan 2022-2028 which was adopted on the 2nd of November 2022, and it came into operation for this area as of the 14th of December 2022. As highlighted in section 6 and above, I wish to draw the Board's attention to the fact that this assessment will be considered in accordance with the 2020 Apartment Guidelines which include Specific Planning Policy Requirements (SPPRs) 7 and 8, which relate to BTR development.
- 7.3.3. It is the appellants contention that there is clear conflict between the current 2022-2028 Development Plan and the 2020 apartment guidelines. The LA were required to apply the 2020 guidelines and it is contended that policies QHNA38 and QHNS40 do not apply to the subject scheme. In any case, it is argued that policy QHSN38 refers to section 15.9.1 and table 37 of the Housing Strategy and on one hand elements of section 15.10 table 37 refers, *inter alia*, to SPPR 8 and the specific relaxations that can be applied to BTR schemes; on the other hand, section 15.9.1 and table 37 provides prescriptive requirements regarding unit mix. It is argued that the Development Plan presents conflicting policies and objectives, and the 2020 Apartment Guidelines takes precedence over development plans where policy conflicts arise by reference to Section 1.19 and 1.20 of the 2020 Apartment Guidelines. In the interest of clarity, I will set out below the relevant policies as set out in the Development Plan 2022-2028 and the requirements of the Apartment Guidelines 2020.

Mix of Units

- 7.3.4. The provision of BTR is provided for in the Dublin City Development Plan 2022-2028 under Section 5.5.7 and policy QHSN40 *Build to Rent Accommodation*, QHSN41, QHSN42 and QHSN44 and Section 15.10. *Build to Rent Residential Developments (BTR)*.

Regarding unit mix, I note, policy QHSN38 - *Housing and Apartment Mix* seeks to encourage and foster the creation of attractive, mixed use, sustainable residential communities which contain a wide variety of housing and apartment types, sizes and

tenures, in accordance with the Housing Strategy and HNDA, with supporting community facilities and residential amenities. Policy QHSN40 also seeks to 'ensure there are opportunities for a sustainable mix of tenure and long-term sustainable communities, a minimum of 60% of units within a development must be designed as standard apartments in accordance with the requirements set out in the Sustainable Urban Housing: Design Standards for New Apartments, December 2020'. Unit mix requirements for the Liberties and the North Inner City are set out in Section 15.9.1 and Table 37 of the Housing Strategy in Appendix 1.

- 7.3.5. The Housing Need and Demand Assessment (HNDA), section 15.9.1 of the Development Plan includes specific housing mix standards for the North Inner City and Liberties Sub-City areas in applications of 15+ units. The outcome of these two local HNDAs indicates increased demand for two and three person households and declining demand regarding single person households. (Section 2.4.1 of Appendix 1, Annex 3 of the CDP refers).
- 7.3.6. Section 15.9.1 sets out the following requirement for unit mix in these two sub-city areas; (i) the Liberties and (ii) the North Inner City -to require planning applications that include residential accommodation of 15 residential units for more in the North Inner City and Liberties Sub-City Areas include the following mix of units:
- A minimum of 15% three or more-bedroom units.
 - A maximum of 25%-30% one bedroom / studio units.
- 7.3.7. 91% of units proposed are studio or 1-bedroom units. The proposed development provides: 56 no. studio apartments, 85 no. one-bedroom apartments and 14 no. two-bedroom apartments.
- 7.3.8. The PA argue that the proposed development would exceed the maximum number of one bedroom / studio units that can be permitted in this instance by 51 no. units and, as such, would be contrary to policies QHSN38 of the current City Development Plan in respect of unit mix and delivering long term sustainable communities, which were borne out of the evidence based research that underpins the Housing Strategy of the City Development Plan. For this reason, the PA recommended that the proposed development be refused permission.

7.3.9. In the first instance, the DCC decision has no regard to the Apartment Guidelines 2020 as they relate to 'Build to Rent' specifically SPPR 7 and SPPR 8 albeit these were acknowledged in the planning officers' assessment prior to RFI request. In the intervening period following the RFI the new Development Plan 2022-2028 was adopted. Of relevance, section 15.9.1 of the Development Plan 2022-2028 clearly sets out that "*in accordance with SPPR8, the unit mix requirement for the North Inner City and Liberties Sub-City Areas **does not apply to units that are designed to a BTR standard***". Therefore, in my opinion the unit mix as set out in the Development Plan is not applicable in this instance as the development is for a 'Build to Rent' development within the North Inner City and subject to the Apartment Guideline 2020 as the application in the first instance was made during the 'transitional arrangement' period.

7.3.10. I agree with the appellant that there is a conflict in the Development Plan as regards housing mix. I consider this conflict arises because of the timeline of the planning application lodgement and the 'transitional arrangements' as set out in section 5.10 of the Apartment Guidelines 2023. Notwithstanding, the fact remains, in accordance with the 'transitional arrangements' and section 15.9.1 of the Development Plan the overriding document is the Apartment Guidelines 2020, in particular, SPPR 7 and SPPR 8. Therefore, I am satisfied that the proposed unit mix can be considered on this site in accordance with the 'transitional arrangements' as set out in Apartment Guidelines 2023 and section 15.9.1 of the CDP 2022-2028.

100% BTR Typology

7.3.11. Policy QHSN40 of the City Development Plan states there shall be a general presumption against large scale residential developments which comprise of 100% Built to Rent typology.

7.3.12. However, policy QHSN40 does set out that Built to Rent (BTR) can be facilitated in specific locations including:

- within 500 metre walking distance of significant employment locations, and
- within 500 metre walking distance of significant employment locations and within 500 metres of major public transport interchanges (e.g. Connolly Station, Tara Street Station and Heuston Station),

- Within identified Strategic Development Regenerations Areas.

where they do not constitute proliferation or over concentration. The subject site meets two of the criteria identified in policy QHSN40. Of particular relevance is that the subject site is located in the city centre, this location ensures that the site is within walking distance significant employment locations. The site is also located 500m east of Connolly Station.

7.3.13. Furthermore, in accordance with QHSN40 the appellant carried out an assessment of BTR applications permitted within a 1km radius of the site. I am satisfied that the development will not result in an over proliferation of BTR in the area as only two no. permissions for BTR development with 1 km of the site were identified permitting a total of 82 no. units. As such there is not a large number of BTR developments permitted within the area. Therefore, I am satisfied that location of the site complies with the locational requirements for BTR as set out in QHSN40 of the CDP 2022-2028 in so far as the site is located within a 500-metre walking distance of significant employment locations and within 500 metres of major public transport interchanges and the development would not constitute over-proliferation of BTR in the area.

7.3.14. I would further note that the Build to Rent Justification Report accompanying the appeal documentation establishes that most recent census (2016) highlights there was a significant proportion of 2-person households in the area, a high proportion of student population is also demonstrated. The report finds that there is “a higher demand for smaller household sizes” in the area. I note that this is contrary to the North Inner City local HNDA as set out above. BTR model offers an alternative residential option for city centre living strategically located close to public transport and in proximity to employment zones and other services and amenities.

7.3.15. In conclusion, I am satisfied that the development is in keeping with the Development Plan which provides for some flexibility as regards 100% BTR typology subject to specific provisions which I am satisfied that the subject site adheres to having particular regard to the city centre location.

Compliance with Apartment Guidelines 2020

7.3.16. The Guidelines establish that BTR schemes have specific distinct characteristics which are of relevance to the planning assessment. The ownership and management of such a scheme is usually carried out by a single entity. In accordance with SPPR 7

a Property Management Strategy Report, A Housing Quality Assessment Report and a Draft Covenant have been submitted with the application. The applicant has specified in the public notices that the development is a BTR scheme.

- 7.3.17. Dedicated shared amenities in accordance with part (b) of SPPR7 are provided at ground floor level and on the top floor. The ground floor area is further enhanced by a public plaza adjoining William's Lane and would be animated by the proposed communal ground floor uses. In accordance with part (b) of SPPR7 the applicant has submitted details on resident support facilities and services. I consider that the internal and external communal spaces within the development have a high standard of design and layout and will adequately serve as amenities for residents of the development. The proposed quantitative and qualitative provision of residents' services and amenities is therefore satisfactory, and I consider that the development complies with SPPR 7 (b) of the Apartment Guidelines, which requires applications for BTR development to comprise residents support facilities and resident services and amenities. A rooftop communal amenity space of 1914sqm is provided, well in excess of the 763sqm requirement as per the Apartment Guidelines. In addition, 25 of the 159 apartments have private amenity space in the form of individual roof terraces. I am satisfied that the proposal complies with SPPR 7.
- 7.3.18. The PA note that the applicant is amenable to extending public realm works into William's Lane subject to agreement with the Council and is also willing to make a financial contribution in lieu of public open space. Whilst I accept these works would be welcome, I note these works are located outside the site boundary.
- 7.3.19. As regards units mix SPPR 8 sets out proposals that qualify as specific BTR development in accordance with SPPR 7. In this regard, no restrictions on dwelling mix apply and therefore the units mix is considered acceptable.
- 7.3.20. This approach is consistent with national policy to increase densities. BTR developments can support a healthy mix in age and tenure. Moreover, the proposed development will provide 10% Part V social housing.
- 7.3.21. I note the development demonstrates compliance with SPPR3 as regards minimum floor area requirements. All individual habitable rooms, floor areas and room width comply or exceed design guidelines requirements, 75 out of the 159 units are oversized by 10%. In accordance with the requirements of SPPR4 the scheme achieves a dual

aspect ratio of 35%, a minimum of 33% dual aspect is required in accordance with section 3.17 of the Apartment Guidelines 2020.

Conclusion

- 7.3.22. Section 5.1 of the Apartment Guidelines 2020 (reinforced in the Apartment Guidelines 2023) set out that BTR types of housing developments have a potential role to play in providing choice and flexibility to people They can provide a viable long term housing solution to households where home-ownership may not be a priority, such people starting out on their careers and who frequently move between countries in the pursuance of career and skills development in the modern knowledge-based economy. This principle is reflected in Section 15.10 *Build to Rent Residential Developments (BTR)* of the Development Plan which acknowledges that that BTR is considered to be an integral part in achieving an appropriate mix of housing in the right locations whilst being mindful of proliferation and over concentration of Build to Rent development in any one area.

I note the policies and objectives within *Housing For All* and the National Planning Framework – Ireland 2040 which fully support and reinforce the need for urban infill residential development such as that proposed on sites in close proximity to quality public transport routes and within existing urban areas. I consider this to be one such site. In my view this development results in wider planning benefits, such as the delivery of a significant quantum of housing and the comprehensive redevelopment of an underutilised urban site which would support the consolidation of the urban environment, which is welcomed. I consider the BTR model offers an alternative residential option for future residents with the benefit of shared communal amenities. In the context of the accessible site location, the provisions of the Dublin City County Development Plan 2022-2028 and the Apartment Guidelines 2020, I consider the proposed BTR scheme an acceptable housing tenure at this location.

7.4. **Building Height/Scale, Heritage and Visual Amenity**

- 7.4.1. The PA consider the proposed development would, due to its excessive scale and height, appear visually incongruous on the skyline when viewed from D'Olier Street and visually obtrusive on the streetscape when viewed from the western end of Middle Abbey Street. As such, the proposed would seriously injure the historic character of the city and would, therefore be contrary to Policy SC22 of the Dublin City

Development Plan 2022-2028 to facilitate new development which is in harmony with the city's historical spaces and structures, and the proper planning and sustainable development of the area.

- 7.4.2. The proposed building will address street level at William's Lane/Prince's Street North with the majority of residential accommodation on a podium level above the streets extending to an overall height of 38.212m over 12 floors. The design reflects the use of contemporary materials and setbacks to identify the original structure/s from the new extension. Whilst the appellant was afforded the opportunity at RFI to reduce the height and scale of the 5 storey elements over Arnotts Car Park, it was decided not to make any changes for the reason that it would make the scheme economically unviable.
- 7.4.3. I acknowledge that the question of building height and scale is a key factor in this appeal case. Appendix 3 of the Development Plan outlines a general rule that the development of innovative, mixed-use development that includes buildings of between 5 and 8 storeys, including family apartments and duplexes is promoted in key areas including the 'City Centre and within the Canal Ring' and SDRAs. Greater heights may be considered in certain circumstances depending on the site's location and context and subject to assessment against the performance-based criteria. There is also recognised scope for height intensification and the provision of higher densities at designated public transport stations and within the catchment areas of major public transport corridors.
- 7.4.4. Section 4.5.4 *Increased Height as Part of the Urban Form and Spatial Structure of Dublin* of the Development Plan establishes policy context. The Development Plan does not provide prescriptive height limits but reflects national guidance. Appendix 3 sets out specific guidance regarding the appropriate locations where enhanced density and scale including increased height will be promoted and also performance criteria for the assessment of such development. Policy SC17 Building Heights seeks to protect and enhance the skyline of the city and includes that proposals "*make a positive contribution to the urban character of the city and that responds positively to the existing or emerging context; deliver vibrant and equitable neighbourhoods that are walkable, compact, green, accessible, mixed and balanced....*" "*All new proposals in the inner city must demonstrate sensitivity to the historic city centre, the River Liffey and quays, Trinity College, the cathedrals, Dublin Castle, the historic squares and the*

city canals, and to established residential areas and civic spaces of local and citywide importance". Appendix 3 states that heights greater than 6 storeys within the Canal Ring will be considered on a case by case basis subject to the performance criteria set out in Table 3.

- 7.4.5. Having regard to the foregoing, I consider that the proposal for 12 storeys would not materially contravene any specific height objectives of the Development Plan.
- 7.4.6. In terms of national policy, the '*Urban Development and Building Heights Guidelines*' promotes Development Plan policy which supports increased building height and density in locations with good transport accessibility and prohibits blanket numerical limitations on building height. Section 3 of the Guidelines deals with the assessment of individual applications and appeals and states that there is a presumption in favour of buildings of increased height in city cores and urban locations with good public transport accessibility. It sets out broad principles and criteria for the assessment of proposals for buildings taller than prevailing heights.
- 7.4.7. In this regard I would generally concur that the proposal assists in securing the NPF objectives of focusing development on key urban centres and fulfilling targets supporting the National Strategic Objective to deliver compact growth in our urban centres.
- 7.4.8. SPPR 3 of the Building Height Guidelines sets out that where a planning authority concurs that an application complies with the criteria outlined in section 3.2 of the Guidelines, taking account of the wider strategic and national policy parameters, the planning authority may approve such development even where specific objectives of the relevant development plan may indicate otherwise.
- 7.4.9. In this case, I am satisfied that the proposal is generally in line with Development Plan policy and does not materially contravene any specific building height objectives. Therefore, the proposal does not rely upon SPPR 3. Notwithstanding this, I acknowledge that the proposed development would be significantly higher than the prevailing building height and I consider it appropriate to apply the criteria outlined in Section 3.2 of the Guidelines in the interests of completeness. Furthermore, I consider that the application of Section 3.2 will adequately cover the criteria set out in Appendix 3 (Table 3) of the Development Plan. Section 3.2 outlines criteria to be assessed at various scales, as discussed in the following paragraphs.

City Scale

- 7.4.10. In relation to public transport services, the site is within a central/accessible city centre location distanced c.280 metres west of O'Connell Street and c. 400m from the Marlborough stop (southbound) serving Luas cross City (green line). The Luas Red Line runs in an east/west direction along Abbey Street Upper to the south of the site. The site is 215m from the Jervis Luas stop, as well as a wide range of frequent bus services, particularly along the Liffey Quays. I am, therefore, satisfied that the site is well served by public transport with high capacity, frequent services and good links to other modes of public transport.
- 7.4.11. In terms of integration with the character and public realm of the area, I note that the site is not located within an ACA or other 'conservation area', although The O'Connell Street Architectural Conservation Area is located to the west of the site. There are no protected structures on the appeal site, but I acknowledge that there are several protected structures in the surrounding area, most notably the GPO, the façade of Arnotts, and several buildings fronting Middle Abbey Street.
- 7.4.12. The application is accompanied by a Landscape and Visual Impact Assessment. It is based on 18 verified viewpoints which compared the proposed and cumulative development to the existing baseline viewpoint.
- 7.4.13. I have reviewed all viewpoints selected and I would concur that the vast majority of baseline views could not be described as highly sensitive. The PA raised specific concerns with the impact of the development on the skyline when viewed from D'Olier Street and the western end of Middle Abbey Street. The Architectural Design Appraisal document submitted by the appellant argues that the proposed materials for the new residential construction provide a strong contrast with the buildings along Middle Abbey Street. The set back of the new residential floors behind Middle Abbey Street frontages means these upper floors will have reduced visual impact along this street. No 97 Middle Abbey Street will have the existing front façade retained and refurbished as part of the development. Also, in response to the appeal the appellant has provided revised proposals for alternative materials to reduce the visual impact for the Boards consideration. The revised proposals include revised light colour cladding panels and additional glass to lighten the scheme. I do not consider the proposed amendments to be material.

- 7.4.14. I accept the proposal will result in some major impacts, but it would still be adequately scaled and distanced from protected structures and would comfortably integrate with the scale of the adjoining conservation area by virtue of design including set back and finishes and separation distance. Therefore, I do not consider that there would be any unacceptable impacts on the character or setting of the area and surrounds and I agree with the appellant that the city scape is evolving to include additional buildings of height.
- 7.4.15. The LVIA identified 4 no. viewpoints namely O (D'Olier Street), P (Middle Abbey Street at Liffey Street), Q (Middle Abbey Street opposite Arnotts) and R (Middle Abbey Street looking northwest) as 'moderate to significant' in terms of potential impact. The LVIA argues that despite the categorisation given the extent of new and emerging development in the immediate area the development may be regarded as being consistent with existing and emerging trends, namely DCC Reg. Ref. 2479/20 – permission granted on 14th January 2021 for development of Jervis Shopping Centre to include residential units on top of the existing shopping centre extending to a maximum height of c.44m and the part 9 part 11 storey hostel at no. 35-36 Abbey Street to the southwest of the site in addition to the VHI Healthcare Office Headquarters- DCC Reg. Ref. 1576/08 extending to 7 storeys reflecting a contemporary modern structure and a dominant architectural form in the context of the historic city character, therefore giving rise to moderate landscape and visual effects.
- 7.4.16. Regarding specific concerns raised about the view from D'Olier Street. View O offers a long-distance continuous view towards the proposed development. I would acknowledge that it is a moderate to significant view with distant views of the building. The south façade upper floors of Block would be visible across the cityscape, and I would agree that the visual impact would be significant, but I consider that it is of an acceptable scale and massing. I am also satisfied that there is a clear distinction between the established character of the existing buildings fronting the Quays and the proposed development which ensures that the established character is framed and not undermined. I consider the changing architectural character serves to enhance and highlight the established character of the existing streetscape. Furthermore, I am satisfied that the changes introduced in the further information response, including a

lighter finish for the upper floors, would further assist in successfully integrating the proposed development into this setting.

- 7.4.17. Regarding specific concerns raised about the view from the western end of Middle Abbey. Views P and Q offers close-up views look north along Middle Abbey Street. Given the scale of the proposed development and the proximity of this viewpoint, I would accept that the proposed development involves a significant increase in height and scale however, I consider that the sets back and juxtaposition of the building facades on the upper floors reduce the immediate visual impact from the Middle Abbey Street while at the same time adding architectural interest. I am also satisfied that the proposed increase in height/scale is appropriately designed and setback to ensure that it would not have an unacceptable dominating or overbearing impact on the character or setting of Middle Abbey Street.
- 7.4.18. I am satisfied that the proposed development would appropriately integrate with existing and permitted development and would not result in any unacceptable visual impacts.
- 7.4.19. In addition to the Townscape and Landscape Visual Impact Assessment, the application is accompanied by a Conservation Assessment. The assessment considers impacts on the wider historic area (including the conservation area), the character of protected structures, and the special interest values of protected structures and their individual elements. It includes an individual assessment of each protected structure and evolution of the architectural character of the area.
- 7.4.20. It is noted that the majority of Middle Abbey Street is dominated by commercial buildings dating from the reconstruction after the 1916 Rising and that there is no coherence of style, scale and massing. Similarly, Upper Liffey Street reflect the same lack of coherence. The age of buildings and building materials vary. Accordingly, I am satisfied that the proposed development would not adversely impact on the character and setting of these streets.
- 7.4.21. It is noted that the O'Connell Street ACA extends along Prince's Street North, the southern site elevation of the GPO runs along Prince's Street. Part of the proposed development will be visible along Prince's Street; the structure will be offset from the direct line of the sight (Photomontage L) and would not represent significant factor in view from O'Connell Street. Furthermore, the existing streetscape is uninviting and

dark with blank facades. I consider that the redevelopment of the site will enhance the appearance of the area and activate dormant street frontages and lane connectivity. This approach would be consistent with section 3.2 of the Guidelines which also refers to the potential for larger urban redevelopment sites to make positive contributions to place-making.

- 7.4.22. I acknowledge that the proposed height exceeds the prevailing building height to the north, south, east and west, however various punctuations of height has accrued and been permitted in the vicinity, and I am satisfied that the design incorporates sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.

District / Neighbourhood / Street Scale

- 7.4.23. It is accepted that the appeal site is part of a larger block which has been largely redeveloped in modern times. It is adjacent to a primary retail shopping area in the city centre. The area is continuing to evolve and is undergoing further redevelopment in the context of recently permitted/constructed developments of significant height/scale as outlined earlier in this report.
- 7.4.24. The proposed development has the potential to facilitate the “air rights” development of this city block. It would also contribute to a new city centre neighbourhood by providing additional city centre living. The proposed form and height, including setback upper levels, has been designed to respond to the site and any overbearing and/or sense of enclosure. The stepped approach to the transition of building height helps to facilitate the integration of modern high-density development with the historic low-density built fabric of the area.
- 7.4.25. The proposed ground floor level at Prince’s Street and Willaims Lane incorporates active frontage and positive public realm works which would help to create a new identity for the development and the surrounding area. The streetscape at this location currently lacks vibrancy and the inclusion of the proposed ground floor commercial units would add to the attractiveness of the area. It would make a positive contribution to the urban neighbourhood and streetscape and presents an opportunity to improve the public realm of the area.
- 7.4.26. The massing of the development is primarily managed by the creation of 3 separate elements with a staggered increase in height form west to east. The block facades

have been divided vertically to and elevations are also treated differently at ground level at podium levels and Prince's Street/William's Lane (street level). The primary finishes include white reconstructed stone and a combination of metal cladding and glass. I consider that this use of form and materials helps to break down the overall scale and massing of the development and avoids a monolithic appearance.

- 7.4.27. A flood-risk assessment has been included with the application to confirm that the site is within 'Flood Zone C' and has a low probability of flooding. It also outlines that the floor levels of each block are raised above the 1% AEP Fluvial flood event and 0.5% AEP Coastal flood event. It concludes that the risk of flooding is minimal, and I am satisfied that the proposal is in line with the requirements of "The Planning System and Flood Risk Management – Guidelines for Planning Authorities" (2009).
- 7.4.28. The proposed development would constitute a distinctive insertion at this location, the proposal would introduce additional residential development to the area which would contribute to the mix of uses in the area and adhere to the principles of compact growth.

Site / Building Scale

- 7.4.29. As previously outlined, the Guidelines outline that the form, massing and height of the development should be carefully modulated so as to maximise access to natural daylight, ventilation and views, and to minimise overshadowing and loss of light. In section 7.5 of this report, I have outlined how appropriate and reasonable regard has been taken of quantitative performance approaches to daylight provision in guides like the Building Research Establishment's '*Site Layout Planning for Daylight and Sunlight*' (2nd edition) or BS 8206-2: 2008 – '*Lighting for Buildings – Part 2: Code of Practice for Daylighting*'.
- 7.4.30. I consider that the impacts of the proposed development on the availability of sunlight and daylight to both existing and proposed properties would be acceptable having regard to BRE recommendations and would not result in any unacceptable impacts. While some shortfalls have been identified, I am satisfied that alternative, compensatory design solutions would apply for both individual apartments and the overall scheme as a whole. Furthermore, I consider that the proposed standards are justified given the wider planning objectives that exist, including compact growth and the need to improve the urban design/streetscape context. I again highlight that the

proposed development does not rely on SPPR 3 to justify any departure from Development Plan building height policy.

Specific Assessments

- 7.4.31. Section 3.2 of the Guidelines also states that to support proposals at some or all of these scales, specific assessments may be required.
- 7.4.32. With regard to micro-climatic effects, the Wind Microclimate Assessment Report concluded that there are no wind safety or distress exceedances at ground level anywhere surrounding the site. All ground level comfort conditions are suitable for their intended uses. There are no significant wind safety or distress exceedances at terrace level. A minor localised region of distress exceedance at the south end of level 11 terrace was noted but it was determined that this area could be restricted by positioning of a planters. I am satisfied that the rooftop spaces would be conducive to sitting, reading and socialising and that the development will not result in wind tunnel effects at street level. I am satisfied that no further assessment of micro-climatic effects is required.
- 7.4.33. There is no indication of potential impacts on important telecommunication channels (such as microwave links) or safe air navigation.
- 7.4.34. The application includes a Design Statement and a Conservation Impact Assessment which outline the design strategy and its impact on the built environment. I am satisfied that there would be no unacceptable impacts in this regard.
- 7.4.35. There are no designated nature conservation sites within c. 2.5km of the appeal site and there is no evidence of ecological sensitivity on the site or in the surrounding area. Accordingly, I am satisfied that an Ecological Impact Assessment is not required. Furthermore, section 8 of this report outlines that Appropriate Assessment is not required and section 5.4 outlines that EIA is not required.

Conclusion

- 7.4.36. In assessing the issues of building height/scale, built heritage, and visual amenity, I have been conscious of the transitioning nature of this area. The proposed development is of a significantly greater height and scale than prevailing building height in the area but is also consistent with the emerging height/scale of development and the relevant Development Plan policies.

7.4.37. I have assessed the proposed development in accordance with the policies and criteria set out in the Building Height Guidelines and I am satisfied that the proposed height and scale would be acceptable at this location and can be accommodated without significantly detracting from the built heritage or character of the area. I have noted the potential amendments to the proposed development as outlined in the appellant regarding the use of lighter finishing materials. I am satisfied that given the minor nature of the changes that this matter can be addressed by way of condition should the Board be minded to grant planning permission.

7.5. **Daylight/Sunlight**

Policy

7.5.1. Although the proposal does not rely on SPPR 3 of the Urban Development and Building Height Guidelines (2018), I note that section 3.2 of the Guidelines states that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. The Guidelines state that ‘*appropriate and reasonable regard*’ should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE (BR 209) ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’.

7.5.2. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and / or an effective urban design and streetscape solution.

7.5.3. The Sustainable Urban Housing Design Standards for New Apartments Guidelines (2020) also highlight the importance of provision of acceptable levels of natural light in new apartment developments, which should be weighed up in the context of the overall quality of the design and layout of the scheme and the need to ensure an appropriate scale of urban residential development. It states that planning authorities ‘*should have*

regard' to these BRE (BR 209) or BS (8206-2) standards when quantitative performance approaches are undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision. Again, where an applicant cannot fully meet these daylight provisions, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting.

- 7.5.4. The Sustainable Residential Development Guidelines acknowledge that orientation of a dwelling and its internal layout can affect levels of daylight and sunlight and will influence not only the amenity of the occupants but the energy demand for heat and light. It states that the efficiency gains derived from passive solar layouts can be enhanced by designing individual dwellings so that solar collection is maximised, i.e. when living rooms, dining rooms and main bedrooms have a southerly aspect. In relation to adjoining properties, it states that overshadowing will generally only cause problems where buildings of significant height are involved or where new buildings are located very close to adjoining buildings. It states that planning authorities should require that daylight and shadow projection diagrams be submitted in all such proposals and the recommendations of BRE (BR 209) or BS (8206-2) guidance *'should be followed in this regard'*.
- 7.5.5. The Development Plan also acknowledges the importance of daylight and sunlight to the internal and external spaces of both existing and proposed development. Appendix 16 of the Development Plan highlights a lack of clarity in standards and guidance and outlines a guide for the carrying out of daylight/sunlight assessments in an attempt to offer clarity on the required technical approach, appropriate standards, and required information. The guide does not outline exact, city wide, expected/accepted results and states that proposals will continue to be assessed on a case-by-case basis depending on site specific circumstances and location.
- 7.5.6. The Development Plan refers to BR 209 (2011) – Site Layout Planning for Daylight and Sunlight, A Guide to Good Practice (Second Edition) However, I note the publication of a new (3rd) edition of the BRE Guide in June 2022 subject to the adoption of the Development Plan. Therefore, I consider it appropriate to apply these standards in my assessment.

- 7.5.7. I would also highlight that the standards described in the BRE (BR 209) guidelines allow for flexibility in terms of their application, with paragraph 1.6 stating that '*Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design*'. It notes that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate etc., and states that industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and arrangement of open space, and these factors will vary from urban locations to more suburban ones.

DCC Refusal Reason

- 7.5.8. DCC contend that the proposed development would, *by reason of its excessive height and massing, result in an inadequate standard of daylight and sunlight amenity within individual apartments and the primary communal open space within the development. As such, the proposed development would be contrary to Policy QHSN36 of the Dublin City Development Plan 2022-2028 to provide for high quality apartment development. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.*

Information & Assessment

- 7.5.9. The appellant contends that the PA have not applied a degree of flexibility to the scheme from a sunlight and daylight perspective having regard to the updated BRE guidelines. In support of the appeal the response refers the Board to the Daylight and Sunlight Report dated 7th February 2023. The report includes reference to BRE Guidelines 2022 (with reference to BRE Guidelines 2011). The report concludes that there is no technical basis for concerns particularly when the results are compared against other Dublin City centre schemes.
- 7.5.10. Having regard to the reason for refusal I will be address the concerns of the PA under the following subheadings.

Internal Daylight and Sunlight - Proposed Apartments

- 7.5.11. In order to undertake the daylight and sunlight assessments a three-dimensional computer model was created to simulate the amount of daylight and sunlight available

to the building facades, internal and external spaces, considering all surrounding obstructions and orientation.

- 7.5.12. All habitable rooms within the development were assessed for daylight provision by illuminance methods. Illuminance methods assess the daylight levels over at least 50% daylight hours in the year and uses a weather file data set. These methods take into account the orientation of the space. They use a climate file and take into account room orientation. They provide an accurate representation of the daylight provision to a specific room in the context of the proposed environment.
- 7.5.13. I note that units have been designed to give priority in terms of daylight to living spaces. All 272 habitable rooms have been tested; 90% (246 out of 272) habitable rooms will see levels of sDA that exceed BRE recommendations. Of the 24 remaining KLD (2 of the remaining are bedrooms) 13 of these rooms are considered to be adequately lit for living room use as they achieve the Spatial Daylight Autonomy (sDA) level of 150Lux, the target criteria for living rooms. The remaining nine open plan KLD have 150Lux within more than 40% of their area for at least half the daylight hours. This is marginally less the BRE standards. I am satisfied that this would constitute a minor, insignificant portion of the overall development and would be likely to occur in any case of high-density development within a tight urban grain such that the appeal site.
- 7.5.14. Regarding the proposed studios 85% (51 of 60) exceed the BRE recommendation of 200Lux within half their areas for half daylight hours. Seven units that fall short within a kitchen achieve 150Lux. The remaining two (76 and 83) have 150Lux within more than 35% of their area for at least half the daylight hours. Three of the nine studios falling short are located within No 97 Middle Abbey Street.
- 7.5.15. The assessment determined that while 5% of the overall development, 3% when excluding the repurposed No. 97 Middle Abbey Street which fall short of the recommended levels of daylight (3 no. studios). These are considered to be adequately lit for the main use as living rooms. I further consider the active use of the upper floors of No. 97 for residential an acceptable and viable use providing for the retention of the structure and ensuring the contribution of the structure to the character of the streetscape is retained. In total 90% (246 of the 272) of proposed habitable rooms see ADF levels that meet or exceed the BRE recommendations. 91% (245 of 268) of the new build meet the criteria.

- 7.5.16. Having regard to the information outlined above I am satisfied that the vast majority of apartments are likely to comply with the ADF target of for kitchen/living/dining rooms and for bedrooms. I consider that the overall scheme as a whole would provide acceptable compliance with the BRE and BS standards, particularly given that BRE standards allow for a flexible and reasonable alternative for ADFs and do not specifically stipulate standards for kitchen/living/dining areas.
- 7.5.17. I acknowledge that Section 3.2 of the Building Height Guidelines outlines that where a proposal may not be able to fully meet all the requirements of the BRE and BS daylight provisions, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the Board should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.
- 7.5.18. In this case it has been clearly identified that the proposal does not comply with the recommended 200Lux value for kitchen/living/dining areas in a minority of cases. And while the applicant has aimed to justify the shortfalls with regard to the urban context. I consider that it is open to the Board to consider the overall quality of the scheme based on the information submitted. In this regard, I would highlight (with reference to section 7.3 of this report) that all individual habitable rooms, floor areas and room width comply or exceed design guidelines requirements, 75 out of the 159 units are oversized by 10%. In accordance with the requirements of SPPR4 the scheme achieves a dual aspect ratio of 35%. Section 4.4 of the of the Daylight/Sunlight RFI response dated 1st December 2022 details compensatory measures. The compensatory measures provide for considered design solutions including open space segregation through the use of a breakfast bar segregating and defining kitchen from Living/dining whilst occupying a single space, excess storage provision, and design measures to address noise and the associated amenity benefits. In addition to the central and accessible location of the site and the benefits of the surrounding amenities and services. These factors provide compensation within the overall scheme for any marginal daylight shortfalls that may apply to individual units.
- 7.5.19. The BRE guidelines acknowledge that it is not realistic for all dwellings in a new development to achieve the target sunlight hours and recommends that the design is

optimised so the maximum number of dwellings can achieve this. This scheme is designed such that 87% (138 out of 159 dwellings) tested enjoy good levels of sunlight units achieving the minimum target recommended level of 1.5 direct sunlight hours on the 21st March.

- 7.5.20. Having regard to the proposed density and central/accessible location of the site, I consider that the proposal contributes to wider planning aims, housing and regeneration. I consider that the shortfalls would not be significant in number or magnitude and in redevelopment sites such as this full compliance with BRE targets is rarely achieved, nor is it mandatory for an applicant to achieve full compliance with same. The target illuminance for rooms is only one measure of residential amenity and in my opinion the overall scheme would receive adequate daylight. As such, the proposal complies with the daylight criteria as set out under Section 3.2 of the Building Height Guidelines and would provide a satisfactory level of amenity for future occupiers.

Sunlight to Proposed Amenity Spaces.

- 7.5.21. The layout provides a variety of communal open space for future residents comprising two large courtyard spaces, five terraces and a fitness area, in addition to a landscape area of public realm at ground level.
- 7.5.22. The proposed ground floor area falls short of the BRE recommendation on 21st March with 21% of its area receiving two or more hours of direct sunlight. In this context, I note the appellants argument that this space is an alleyway located at ground level shaded by existing built fabric and on balance I consider that the proposed space and public realm enhancements offers a wider planning gain to the area and any shortfall is considered acceptable.
- 7.5.23. Regarding the communal outdoor spaces, 67% of the spaces received two or more hours of direct sunlight on the 21st March. This is in excess of the BRE guidance which sets out that 50% of such areas should receive in excess of 2 hours sunlight on the 21st March. Of note the RFI response notes that the eastern courtyard sees lower levels of sunlight reaching the ground level of 21st March. It is set out the sun exposure in this area improves throughout the spring, with the courtyard enjoying approx. 4 hours of direct sunlight at ground level over half its area between 21st May – 21st July.

- 7.5.24. Whilst I accept that the eastern courtyard does not meet the two or more hours of direct sunlight on the 21st March, the scheme as a whole exceeds the BRE guidance that 50% of communal open spaces should receive in excess of 2 hours sunlight on the 21st March. I am satisfied that the scheme offers a range of communal amenity spaces which future residents can avail of throughout the year. I am satisfied that these amenity spaces will benefit from a high level of sunlight availability when compared to the BRE recommendations.

Conclusions on Daylight/Sunlight

- 7.5.25. In conclusion, I would again highlight that the standards described in the BRE guidelines allow for flexibility in terms of their application. And while the Building Height Guidelines state that appropriate and reasonable regard should be had to the quantitative approaches as set out in guides like the BRE and BS 8206-2: 2008 publications, where it has been identified that a proposal does not fully meet the requirements of the daylight provisions and a rationale for alternative, compensatory design solutions has been set out, the Board can apply discretion having regard to local factors including site constraints and the need to secure wider planning objectives.
- 7.5.26. I have acknowledged the instances where BRE recommendations are not fully met. However, having regard to the nature of the existing surrounding development; the relatively minor scale of non-compliance with standards; the overall quality of amenity for the prospective residents; and the city centre location of the site; I consider that the standard of the proposed development and its impacts on the availability of sunlight and daylight to existing properties would not result in any unacceptable impacts.

7.6. **Car Parking - Hours of Operation**

- 7.6.1. The appellant is seeking to a temporary permission (five years) to extend the opening hours of Arnotts' multi-storey car park from 07.00 to 20.00 Monday to Wednesday, 07.00 to 21.00 on Thursday, 07.00 to 20.00 on Friday and Saturday, and 09.00 to 20.00 on Sunday, to 24 hours a day, seven days a week.
- 7.6.2. The PA recommended this be refused on the grounds that the proposed extension of the opening hours of the existing multi-storey car park would, in the absence of the decommissioning of the 145-no. car parking associated with the proposed Build to Rent development, encourage unsustainable travel patterns to and from the city

centre. The proposed development would, therefore, be contrary to Policy SMT26 of the Dublin City Development Plan 2022-2028 to discourage commuter parking and to ensure adequate but not excessive parking provision for short-term shopping, business and leisure uses.

- 7.6.3. The PA in their assessment refer to the fact that the Transportation Planning Division had no objection to the proposed extended opening hours for the existing multi-storey car park for a temporary period of five years but that this was contingent upon the decommissioning of 145 no. car parking spaces arising from the demolition of the top three open-air levels of Arnotts' carpark to facilitate the proposed BTR development.
- 7.6.4. Section 8.5.7 of the Development Plan emphasises that a strong car-parking policy in the city has been instrumental in changing travel behaviour and promoting sustainable development and confirms that policies to discourage commuter car parking are further strengthened in the plan. This is reinforced by Policy SMT26 –Commuter, Shopping, Business and Leisure Parking which state that it is the policy of the Council *-To discourage commuter parking and to ensure adequate but not excessive parking provision for short-term shopping, business and leisure uses.*
- 7.6.5. Whilst I note the policy provisions as set out in the Development Plan, it is of relevance this this is an existing car park. I further note that DCC had previously consented to the development under DCC Reg. Ref. 2307/21 for a temporary period of two years. The permission was not implemented and expired on 2nd July 2023. The appellant argues that this permission was granted in the absence of the requirement to decommission spaces.
- 7.6.6. Of relevance, the proposed scheme has been appropriately designed as a 'car-free' development which would promote active travel and public transport usage. There are suitable and sufficient alternative mobility solutions in this central/accessible location. No car parking spaces are proposed to be dedicated solely to the future residents of the proposed BTR development. However, it is the appellants case that the primary factor for the request is the presence of a large number of hotels in the area which do not have the benefit of safe and secure parking and while business continue to recover after the pandemic it is too early to determine if permanent modal shift has occurred. It is further argued that reductions in on street car parking as a result of public enhancements and pedestrianisation initiatives increase the importance of the

provision of round the clock off street parking facilities in facilitating parking and assessable parking.

7.6.7. In light of the fact that this is an existing car park operating from 7am to 8/9pm respectively 7 days a week, I do not consider the introduction of overnight (24 hour) car parking will have any significant detrimental impact of established travel patterns or result in any increase in short-term commuter parking over and above existing patterns as the existing car parking hours already cater for this demand. However, I note the appellant's comments that while businesses continue to recover after the pandemic it is too early to determine if permanent modal shift has occurred, therefore, I consider a temporary two-year permission is appropriate in this instance similar to the approach previously take by DCC. I am mindful that the appellant was previously granted permission in 2021 and did not take up the permission.

7.6.8. In conclusion, having regard to the fact that this relates to an existing car park with established opening hours form 7 am to 8/9pm daily, I am satisfied that the extension of opening hours for a temporary period of two years will provide an appropriate amount of time to ascertain if the development will have a detrimental impact on modal shift patterns and /or traffic safety.

7.6.9. In light of the established opening hours and the imposition of a temporary permission, I am satisfied that the extended opening hours will not be contrary to Policy SMT26 – *Commuter, Shopping, Business and Leisure Parking* of the Development Plan.

7.7. **Other Matters**

Drainage

7.7.1. The report from the Drainage Division of DCC dated 20/12//2022 sets out that the Drainage Division objects to the proposals and recommends permission be refused as the scheme does not comply with the Dublin City Development Plan 2022-2028 in so far as:

- The development proposals do not include a 'green blue roof'.
- The applicant has not submitted a Basement Impact Assessment

7.7.2. The planning officer in their assessment notes the report from the Drainage Division and sets out that these matters do not warrant refusing permission in their own right

and might have been resolved had the statutory timeframe for requesting clarification of further information allowed and has all other matters been in order.

- 7.7.3. Policy S123 Green *Blue Roofs* requires all new developments with roof areas in excess of 100 sq. metres to provide for a green blue roof designed in accordance with the requirements of Dublin City Council's Green & Blue Roof Guide (2021) which is summarised in Appendix 11.
- 7.7.4. An extensive green roof is proposed for the roof of the building. The Water Services reports submitted as part of the planning application prepared by Barry & Partners Consulting Engineers states that the roof details will be in accordance with the SUDS Manual and relevant Dublin City Council Guidelines. I am satisfied that this matter can be appropriately addressed by way of condition should the Board be minded to grant planning permission.
- 7.7.5. Similarly, A Basement Impact Assessment can be addressed by way of an appropriately worded condition requiring submission and agreement prior to the commencement of any development works should the Board be minded to grant planning permission.

Archaeology

- 7.7.6. The site is located within the Zone of Archaeological Constraint for Recorded Monument DU018-020 (Dublin City). Therefore, I recommend that inclusion of a condition to safeguard potential archaeology on the site in the event the Board are minded to grant planning permission

8.0 **AA Screening**

Compliance with the Habitats Directive

- 8.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.2. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management

of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development 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).

Information Submitted

- 8.3. The applicant has submitted an Appropriate Assessment Screening Report as part of the planning application. The Screening Report has been prepared by Altemar Marine & Environmental Consultancy. It provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. It concludes that there is no possibility of significant impacts on Natura 2000 sites, qualifying interests, or site-specific conservation objectives, and that a Natura Impact Statement is not required.
- 8.4. Having reviewed the documents and submissions, I am satisfied that the submitted information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

The need for Stage 1 AA Screening

- 8.5. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

Brief Description of the Development

- 8.6. The applicant provides a description of the project on page 4 of the Screening Report. The development is also summarised in Section 2 of this Report. In summary, permission is sought for the construction of Build-To-Rent residential development

consisting of 155 apartments with all associated site works and the temporary extension of the opening hours of the existing multi-storey 'Arnotts' Car Park in Dublin City Centre.

- 8.7. The site is serviced by public water and drainage networks. All sewage from the proposed development will be to a combined sewer, which will drain to the Ringsend WWTP and ultimately outfall to Dublin Bay. The proposed development incorporates attenuation for surface water. The dominant habitat on site is buildings and artificial surfaces, and the level of biodiversity on the site is minimal. There are no surface watercourses within or immediately adjoining the site.

Submissions and Observations

- 8.8. The submissions and observations as well as the reports of the planning authority, are summarised in sections 3 and 6 of this Report. The submissions do not raise any issues in relation to Appropriate Assessment.

European Sites

- 8.9. A summary of European Sites that occur within a 15km radius of the proposed development is presented Figures 8 and 9 of the applicant's Screening Report. I note that the site is not within or immediately adjacent to a Natura 2000 site. The nearest Natura 2000 sites are in the inner section of Dublin Bay. The river Liffey is located 150m south of the site. The nearest Natura 2000 site is North Bull Island SPA at a distance of 2.5km and the South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA at a distance of c. 3.6km and 3.6km respectively. There are several other Natura 2000 sites within the wider Dublin Bay area.
- 8.10. Table 2 of the applicant's screening report assesses the potential impacts associated with the proposed development for each site taking account of the conservation objectives and qualifying interests.
- 8.11. The indirect hydrological connection between the proposed development and habitats and species of European sites in Dublin Bay is identified due to the combined surface and foul water connection. This is discussed further below. The report does not identify any potential for a hydrological connection to any European site through groundwater. Similarly, the potential for significant impacts such as displacement or disturbance due to loss or fragmentation of habitats or other disturbance is not

identified. In this regard, I note the lack of suitable habitat for qualifying interests and the significant intervening distances between the appeal site and European sites.

- 8.12. In applying the 'source-pathway-receptor' model, in respect of potential indirect effects, I would accept that all sites outside of Dublin Bay can be screened out for further assessment at the preliminary stage based on a combination of factors including the intervening minimum distances and the lack of hydrological or other connections. Furthermore, in relation to the potential connection to sites in the outer Dublin Bay area, I am satisfied that the Rockabill to Dalkey Island SAC, Dalkey Island SPA and Howth Head Coast SPA are not within the downstream receiving environment of the proposed development given the nature and scale of the proposed development, the insignificant loading in terms of either surface water or wastewater, the intervening distances and the significant marine buffer and dilution factor that exists between the sites. I conclude that it is reasonable to conclude on the basis of the available information that the potential for likely significant effects on these sites can be excluded at the preliminary stage.
- 8.13. The designated area of sites within the inner section of Dublin Bay, namely South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA are closer to the development site and to the outfall location of the Ringsend WWTP. They could, therefore, reasonably be considered to be within the downstream receiving environment of the proposed development and on this basis these sites should be subject to a more detailed Screening Assessment.
- 8.14. I am satisfied that the potential for impacts on all other Natura 2000 Sites can be excluded at the preliminary stage due to the nature and scale of the proposed development, the degree of separation and the absence of ecological and hydrological pathways.

Identification of likely effects

- 8.15. The Conservation Objectives (CO) and Qualifying Interests of the relevant sites in inner Dublin Bay are shown in Table 3 below.

Table 3: Summary of relevant European Sites.

European Site	Distance	Conservation Objective	Qualifying Interests
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South Dublin Bay SAC (000210)	c. 3.5 km from the proposed development.	To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide.	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]
North Dublin Bay SAC (000206)	c.5.5 km northeast of the proposed development.	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	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 (Glaucopuccinellietalia maritimi) [1330] / Mediterranean salt meadows (Juncetalia maritimi) [1410] / Embryonic shifting dunes [2110] / Shifting dunes along the shoreline with Ammophila arenaria [2120] / Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] / Humid dune slacks [2190] / Petalophyllum ralfsii (Petalwort) [1395].
South Dublin Bay and River Tolka Estuary SPA (004024)	c. 3.6 km from the site.	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	Light-bellied Brent Goose (Branta bernicla hrota) [A046] / Oystercatcher (Haematopus ostralegus) [A130] / Ringed Plover (Charadrius hiaticula) [A137] / Grey Plover (Pluvialis squatarola) [A141] / Knot (Calidris canutus) [A143] /

			<p>Sanderling (<i>Calidris alba</i>) [A144] / 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 (<i>Sterna dougallii</i>) [A192] / Common Tern (<i>Sterna hirundo</i>) [A193] / Arctic Tern (<i>Sterna paradisaea</i>) [A194] / Wetland and Waterbirds [A999]</p>
North Bull Island SPA (004006)	c. 2.5 km northeast of the site.	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.	<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] / Shelduck (<i>Tadorna tadorna</i>) [A048] / Teal (<i>Anas crecca</i>) [A052] / Pintail (<i>Anas acuta</i>) [A054] / Shoveler (<i>Anas clypeata</i>) [A056] / Oystercatcher (<i>Haematopus ostralegus</i>) [A130] / Golden Plover (<i>Pluvialis apricaria</i>) [A140] / Grey Plover (<i>Pluvialis squatarola</i>) [A141] / Knot (<i>Calidris canutus</i>) [A143] / Sanderling (<i>Calidris alba</i>) [A144] / Dunlin (<i>Calidris alpina</i>) [A149] / Black-tailed Godwit (<i>Limosa limosa</i>) [A156] / Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] / Curlew (<i>Numenius arquata</i>) [A160] / Redshank (<i>Tringa totanus</i>) [A162] / Turnstone (<i>Arenaria</i></p>

			interpres) [A169] / Black-headed Gull (Chroicocephalus ridibundus) [A179] / Wetland and Waterbirds [A999].
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- 8.16. Having regard to the foregoing and the potential impacts of the proposed development, I would state that the nature and scale of the proposed development is not exceptional for city centre development in terms of its complexity or magnitude, either at construction phase or operational phase.
- 8.17. During the construction phase standard pollution control measures are to be used to prevent sediment or pollutants from leaving the construction site and entering the water system. During the operational phase foul and surface water will drain to combined sewers. The combined discharge from the proposed development would drain, via the public network, to the Ringsend WWTP for treatment and ultimately discharge to Dublin Bay. There is potential for an interrupted and distant hydrological connection between the site and sites in Dublin Bay due to this pathway. However, the discharge from the site is negligible in the context of the overall licenced discharge at Ringsend WWTP, and thus its impact on the overall discharge would be negligible.
- 8.18. I have had regard to the planning history of the area and the nature and extent of permitted development in the vicinity. Similar to the proposed development, I consider that the cumulative impact of these other projects would not be likely to have significant effects on any European Sites.

Mitigation Measures

- 8.19. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

AA Screening Conclusion

- 8.20. It is reasonable to conclude that, on the basis of the information on file, which I consider adequate in order to issue a screening determination, the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Estuary SPA (004024), North Bull

Island SPA (004006), or any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required.

9.0 Conclusion and Recommendation

For the reasons outlined above, I consider that the proposal is in compliance with the proper planning and sustainable development of the area, and I recommend that permission is GRANTED subject to the following conditions.

10.0 Reasons and Considerations

Having regard to:

- a. The site's location on lands zoned 'City Centre' where Build to Rent residential is 'open for consideration';
- b. The policies and objectives in the Dublin City Development Plan 2022-2028
- c. Nature, scale and design of the proposed development;
- d. Pattern of existing development in the area;
- e. The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- f. Housing for All – A New Housing Plan for Ireland, 2021
- g. The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- h. Regional Spatial and Economic Strategy for the Eastern and Midland Region;
- i. The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- j. The Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013;

k. Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020;

l. The Urban Development and Building Heights Guidelines for Planning Authorities 2018; and

n. Submissions received.

It is considered that, subject to compliance with the conditions set out below, the proposed development 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 quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 12th January 2022 and on the 5th December 2022 and as amended by the further plans and particulars submitted to An Bord Pleanála on 7th February 2023, 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity

2. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020) and be used for long term rentals only. No portion of this development shall be used for short-term lettings.

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

3. Permission to extend the opening hours of Arnotts' multi-storey car park from 07.00 to 20.00 Monday to Wednesday, 07.00 to 21.00 on Thursday, 07.00 to 20.00 on Friday and Saturday, and 09.00 to 20.00 on Sunday, to 24 hours a day, seven days a week is hereby permitted for a temporary period of two year only.

Reason: In the interest of the proper planning and sustainable develop of the area, and in order that the effect of the development maybe revied having regard to the circumstances then prevailing.

4. Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of 15 years shall be from the date of occupation of the first residential unit within the scheme. This covenant or legal agreement shall also highlight the reduced level of car parking available to future residents.

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

5. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

6. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application and as amended by the further plans and particulars submitted to An Bord Pleanala on 7th February 2023, unless otherwise agreed in writing with, the planning authority/An Bord Pleanála 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

7. Proposals for an apartment naming / numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed names shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

8. 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 residential amenities of property in the vicinity and the visual amenities of the area.

9. The site shall be landscaped in accordance with the landscape scheme submitted to the planning authority with the application, unless otherwise agreed in writing with the planning authority. Sufficient planting depths in the raised planters shall be agreed with the planning authority for all podium and roof level planting. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

Reason: In order to ensure the satisfactory of the public open space areas, and their continued use for this purpose

10. The site shall be landscaped in accordance with the submitted scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The landscaping proposal shall have

particular regard to the northern site boundary and the future outlook of residents of the ground floor apartments. Sufficient planting depths in the raised planters shall be agreed with the planning authority for all podium and roof level planting. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter.

Reason: In the interest of residential and visual amenity.

11. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any apartments. The lighting scheme shall form an integral part of landscaping of the site.

Reason: In the interests of public safety and amenity, to prevent light pollution.

12. 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

13. The construction of the development shall be managed in accordance with a Construction Management Plan and Environmental Management Construction 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 intended construction practice for the development, including hours of working, noise and dust management measures, traffic management arrangements/ measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety.

14. Construction and demolition waste shall be managed in accordance with a construction and demolition waste management plan and construction environmental management plan, which shall be submitted to, and agreed in writing with, the planning

authority prior to commencement of development. This plan shall be prepared in accordance with the 'Best Practice Guidelines for the preparation of resource & waste management plans for construction & demolition projects' published by the Environmental Protection Agency in 2021.

Reason: In the interest of sustainable waste management.

15. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority.

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

16. Prior to the commencement of development, the developer shall enter into water and waste-water connection agreement(s) with Irish Water.

Reason: In the interest of public health

17. A Basement Impact Assessment shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of proper planning and orderly development

18. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

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

19. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

20. 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 shall be submitted to, and agreed in

writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

21. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and 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 hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological

22. 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.

23. 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.

24. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to permission.

I confirm that this report represents my professional planning assessment, judgement and opinion of 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.

Irené McCormack

Senior Planning Inspector

2nd October 2023