



An
Bord
Pleanála

Inspector's Report

ABP-315876-23

Development	Demolition of 3 vacant shed units, construction of 3 houses and associated works.
Location	to the rear of No's 4 to 16 Saint Brendan's Cottages, Dublin 4
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	5282/22
Applicant(s)	JP Dairy Developments Limited
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	JP Dairy Developments Limited
Observer(s)	1. Cristina Marini, 2. Deirdre Bloomer Daly & Finbarr Daly, 3. Gillian Lawless & Brian Kealy, 4. Joe Bonner Consultant on behalf of Genevieve MacKenzie, David Morris, Terry Louise Finnie, 5. Christy Barry, 6.

Margaret O’Riordan and 7. Sharon
Coffey

Date of Site Inspection

02/09/23

Inspector

Adrian Ormsby

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1.0 Site Location and Description

- 1.1. The appeal site is c. 2.5km to the south east of Dublin City centre. It is a backland site between houses on St. Brendan's Cottages and a number of houses in a development known as The Square. St Brendan's Cottages are generally single storey but a number have recently been developed to include raising the roof level and extending at ground and first floor level to the rear. There are four residential units in the development known as the Square numbered 8A-D. Numbers 8A-C are two storey while 8D is a most recent single storey houses.
- 1.2. The site is underutilised and includes a number of old shed style buildings in no apparent current use. The site can be accessed via two existing gates to the north east of No. 16 and between house No's 6 and 7 St. Brendan's Cottages. The site is located just south west of Ringsend Parks with direct access to the park available from S. Brendan's Cottages.
- 1.3. The site has a stated area of 629 m².

2.0 Proposed Development

- 2.1. The proposed development comprises-
 - demolition of the 3 existing vacant shed units 237 sq.m and
 - the construction of 3 two-storey houses
 - existing access from Saint Brendan's Cottages
 - 3 off street carparking spaces.
- 2.2. Question 10 (g) of the application form indicates a proposed plot ratio of 1:0.54. 10 (h) indicates site coverage of 37.4%.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority refused permission on the 26/01/23 for the following two reasons-

1. *The Council is not satisfied that the application has been made by a person who has*
 - a. *Sufficient legal estate or interest in the land the subject of the application to enable the proposed works to be carried out on the said land.*
 - b. *The approval of the person who has sufficient legal interest or estate.*

In considering these circumstances the Council is precluded from considering the granting of permission for the development the subject of the application.

2. *Having regard to the two-storey design of the proposed dwellings, and in the absence of compelling evidence to the contrary, it is considered that the proposed development would give rise to adverse overlooking and overbearing impacts on adjoining properties, including No. 30 Irishtown Road, No. 8B and 8D The Square and the adjacent artisan cottages, St. Brendan's Cottages.*

As such, the proposed development would constitute overdevelopment of this constrained site and would seriously injure the amenities and depreciate the value of property in the vicinity. The proposed development would, therefore, be contrary to the Z1 and Z2 zoning objectives for the site and the proper planning and sustainable development of the area.

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer reflects the decision of the Planning Authority.

The following is noted from the report:

- The site is primarily zoned Z1 to protect, provide and improve residential amenities.
- The portion of the site located between No. 6 and No. 7 St. Brendan's Cottages is zoned Z2; to protect and/or improve the amenities of residential conservation areas, as are St. Brendan's Cottages generally.
- The subject site is located within Flood Zone A within an area indicated as being defended as per the Strategic Flood Risk Assessment of the City Development Plan.
- The applicant has submitted a document addressing the legal Ownership of the site. The applicant contends they have sufficient legal interest in the site and therefore the right to develop. Supporting documentation is submitted.
- Correspondence received from the Council's Property Management Section concludes that the applicant has not proven the adverse possession claim to the laneways in the Land Registry.
- The Development Depts position is that DCC cannot claim full unencumbered Freehold title to the laneways but does have some title interest in the laneways as successor to the Pembroke UDC.'
- One of the smaller sheds proposed to be demolished (Shed A) has in fact already been demolished. The demolition of same may fall within the scope of Class 50 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, i.e. demolition of a building not exceeding 100sq.m in floor area within the curtilage of a business premises. The inclusion of these works in the development description for the current application is not so misleading to warrant its invalidation; in this regard it is considered that the public have been given adequate notice of the overall nature of the proposed development.

- Unit No. 1 would be set back just 8.5m from the rear garden and 17.6m from the first floor window of No. 30 Irishtown Road with a large area of glazing proposed on the first floor; and therefore adverse overlooking impacts on this property would arise.
- Unit No. 1 is also likely to appear visually overbearing when viewed from the rear of No. 6. A single storey dwelling would be more appropriate at this location given the overlooking and overbearing issues arising.
- Unit No. 2 and No. 3 are also likely to appear overbearing when viewed from the rear of the adjoining artisan cottages, and No. 9 and No. 14 St. Brendan's Cottages in particular. Whilst there may be some scope for first floor accommodation adjoining the gables of No. 8A and 8B The Square, it is limited and needs to be checked against the impact on the adjoining properties.
- The development has been screened for AA. It has been found that significant effects are not likely to arise, either alone or in combination with other plans and projects that will result in significant effects to any Natura 2000 area. A full Appropriate Assessment of this project is therefore not required.
- Having regard to the nature of the development in an urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore be excluded at preliminary examination and a screening determination is not required.

4.2. Other Technical Reports

- Transportation Planning Division
 - 17/01/23- no objection subject to conditions
- Drainage Division-
 - 20/12/22- Further Information required in relation to the submitted flood risk assessment and a revised drainage layout is required.

4.3. Prescribed Bodies

- None

4.4. Third Party Observations

- Eleven submission was received by the Council on this application. The main issues raised are generally those as detailed in the observations to the Appeal and as set out in section 7.3 below.

5.0 Planning History

This Site-

- 3621/22- Demolition of 4 vacant units and permission for 4 houses (3 houses after FI). **Refused** on the for 02/09/22 for two reasons summarised as follows-
 - The applicants legal interest in the site
 - adverse overlooking, daylight and sunlight and overbearing impacts on adjoining properties, overdevelopment of the site, seriously injure the amenities and depreciate the value of property in the vicinity and contrary to the Z1 and Z2 zoning objectives for the site.

Site at rear of No. 28 Irishtown Road- 8D The Square

- PL29S.248898 / Web1260/17- Single storey house, no car parking, **Granted** 09/11/2017
- PL29S.246337 / Web1346/15- Two storey house, with car parking (turntable), **Refused** 04/08/16 one reason- significant overdevelopment of a restricted site, seriously injure residential amenity by reason of overbearing and overshadowing, inappropriate vehicular access.

No. 15 St Brendan's Cottage-

- 3172/21- a ground floor extension to the rear, first floor extension to the rear, conversion of attic to habitable accommodation, increase in ridge height
Grant 21/10/21

6.0 Policy Context

6.1. Planning and Development Act 2000 as amended-

- Section 34 (13)- *A person shall not be entitled solely by reason of a permission under this section to carry out any development.*

6.2. Ministerial Guidelines and Other Guidance-

6.2.1. Development Management Guidelines for Planning Authorities June, 2007

- Section 5.13 'Issues relating to title to land'-

"Under the Planning Regulations as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.

The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision.

Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have

sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.....”

6.2.2. Quantitative methods for daylight assessment are detailed in the following documents:

- BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' 2022 edition
- BS EN 17037:2018 Daylight in Buildings.
- BS 8206-2:2008 – Lighting for Buildings- Part 2: Code of practice for Daylighting.

6.3. **Dublin City Development Plan 2016-2022 (DCDP)**

- 6.3.1. The majority of the appeal site has a zoning objective 'Z1 Sustainable Residential Neighbourhoods' including the parcel of land to the north east of the site in which two car parking spaces are proposed. Z1 zoned lands has a stated objective '*To protect, provide and improve residential amenities*'.
- 6.3.2. A very small parcel of land between No. 6 and 7 St Brendan's Cottage in which one car parking space is proposed is zoned 'Z2 - Residential Neighbourhoods (Conservation Areas)' with a stated objective '*To protect and/or improve the amenities of residential conservation areas*'.
- 6.3.3. 'Residential' is listed as a 'Permissible Uses' within both these zonings. See section 14.7.2. of the DCDP.
- 6.3.4. Relevant planning policies and objectives for residential development are set out under Chapter 5 (Quality Housing and Sustainable Neighbourhoods) and Chapter 15 (Development Standards) within Volume 1 of the Development Plan.
- 6.3.5. The following policy in relation to Flooding is relevant-

- SI16 Site-Specific Flood Risk Assessment

Proposals which may be classed as 'minor development', for example small scale infill, extensions to houses and small-scale extensions to existing commercial and industrial enterprises in Flood Zone A or B, should be assessed in accordance with the Guidelines for Planning Authorities on the Planning System and Flood Risk Management and Technical Appendices (2009), as revised by Circular PL 2/2014 and any future amendments, with specific reference to Section 5.28 and in relation to the specific requirements of the Strategic Flood Risk Assessment. This will include an assessment of the impact of climate change and appropriate mitigation. The policy shall be not to increase the risk of flooding to the development or to third party lands, and to ensure risk to the development is managed.

6.3.6. The following policy in relation to 'Built Heritage and Archaeology' is relevant-

- BHA9 Conservation Areas

To protect the special interest and character of all Dublin's Conservation Areas – identified under Z8 and Z2 zoning objectives and denoted by red line conservation hatching on the zoning maps. Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include:

- 1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.*
- 2. Re-instatement of missing architectural detail or important features.*
- 3. Improvement of open spaces and the wider public realm and reinstatement of historic routes and characteristic plot patterns.*
- 4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.*
- 5. The repair and retention of shop and pub fronts of architectural interest.*

6. *Retention of buildings and features that contribute to the overall character and integrity of the Conservation Area.*

7. *The return of buildings to residential use.*

Changes of use will be acceptable where in compliance with the zoning objectives and where they make a positive contribution to the character, function and appearance of the Conservation Area and its setting. The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications, and will promote compatible uses which ensure future long-term viability

6.3.7. Section 15.5.2 is titled 'Infill Development' and states-

'Infill development refers to lands between or to the rear of existing buildings capable of being redeveloped i.e. gap sites within existing areas of established urban form. Infill sites are an integral part of the city's development due to the historic layout of streets and buildings.

Infill development should complement the existing streetscape, providing for a new urban design quality to the area. It is particularly important that proposed infill development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape.

As such Dublin City Council will require infill development:

- *To respect and complement the prevailing scale, mass and architectural design in the surrounding townscape.*
- *To demonstrate a positive response to the existing context, including characteristic building plot widths, architectural form and the materials and detailing of existing buildings, where these contribute positively to the character and appearance of the area.*
- *Within terraces or groups of buildings of unified design and significant quality, infill development will positively interpret the existing design and architectural features where these make a positive contribution to the area.*

- *In areas of low quality, varied townscape, infill development will have sufficient independence of form and design to create new compositions and points of interest.*
- *Ensure waste management facilities, servicing and parking are sited and designed sensitively to minimise their visual impact and avoid any adverse impacts in the surrounding neighbourhood.*

6.3.8. Section 15.11.4 deals with ‘Separation Distances (Houses)’ and states-

‘At the rear of dwellings, there should be adequate separation between opposing first floor windows. Traditionally, a separation of about 22 m was sought between the rear first floor windows of 2-storey dwellings but this may be relaxed if it can be demonstrated that the development is designed in such a way as to preserve the amenities and privacy of adjacent occupiers. Careful positioning and detailed design of opposing windows can prevent overlooking with shorter back-to-back distances and windows serving halls and landings which do not require the same degree of privacy as habitable rooms.

6.3.9. Section 15.13.4 is titled ‘Backland Housing’ and states-

‘Backland development is generally defined as development of land that lies to the rear of an existing property or building line. Dublin City Council will allow for the provision of comprehensive backland development where the opportunity exists.

Backland housing can comprise of larger scale redevelopment with an overall site access; mews dwellings with access from a rear laneway or detached habitable dwellings to the rear of existing housing with and independent vehicular access.

..... Backland development, however, requires more innovation and reinterpretation to enable comprehensive development of these spaces. Consideration of access and servicing and the interrelationship between overlooking, privacy, aspect and daylight / sunlight are paramount to the success and acceptability of new development in backland conditions.

.....

Applications for backland housing should consider the following:

- *Compliance with relevant residential design standards in relation to unit size, room size, private open space etc.*
- *Provision of adequate separation distances to ensure privacy is maintained and overlooking is minimised.*
- *That safe and secure access for car parking and service and maintenance vehicles is provided.*
- *The scale, form and massing of the existing properties and interrelationship with the proposed backland development.*
- *The impacts on the either the amenity of the existing properties in terms of daylight, sunlight, visual impact etc. or on the amenity obtained with the unit itself.*
- *The materials and finishes proposed with regard to existing character of the area.*
- *A proposed backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.*
- *A relaxation in rear garden length, may be acceptable, once sufficient open space provided to serve the proposed dwelling and the applicant can demonstrate that the proposed backland dwelling will not impact negatively on adjoining residential amenity.*

All applications for infill developments will be assessed on a case by case basis. In certain instances, Dublin City Council may permit relaxation of some standards to promote densification and urban consolidation in specific areas. The applicant must demonstrate high quality urban design and a comprehensive understanding of the site and the specific constraints to justify the proposal.

6.3.10. The following sections are relevant-

- 15.9.18 Overlooking and Overbearance

‘Overbearance’ in a planning context is the extent to which a development impacts upon the outlook of the main habitable room in a home or the garden,

yard or private open space service a home. In established residential developments, any significant changes to established context must be considered. Relocation or reduction in building bulk and height may be considered as measures to ameliorate overbearance.

6.3.11. The following Policies are relevant-

- QHSN2 National Guidelines

To have regard to the DEHLG Guidelines on ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007), ‘Sustainable Urban Housing: Design Standards for New Apartments’ (2020), ‘.....’

- QHSN10 Urban Density

To promote residential development at sustainable densities throughout the city in accordance with the core strategy, particularly on vacant and/or underutilised sites, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

- QHSN37 Houses and Apartments

To ensure that new houses and apartments provide for the needs of family accommodation with a satisfactory level of residential amenity in accordance with the standards for residential accommodation.

- BHA9 Conservation Areas

To protect the special interest and character of all Dublin’s Conservation Areas identified under Z8 and Z2 zoning objectives and denoted by red line conservation hatching on the zoning maps. Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include:

1. *Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.*

2. *Re-instatement of missing architectural detail or important features.*
3. *Improvement of open spaces and the wider public realm and reinstatement of historic routes and characteristic plot patterns.*
4. *Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.*
5. *The repair and retention of shop and pub fronts of architectural interest.*
6. *Retention of buildings and features that contribute to the overall character and integrity of the Conservation Area.*
7. *The return of buildings to residential use.*

Changes of use will be acceptable where in compliance with the zoning objectives and where they make a positive contribution to the character, function and appearance of the Conservation Area and its setting. The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications, and will promote compatible uses which ensure future long-term viability.

6.4. Natural Heritage Designations

- None relevant

6.5. EIA Screening

6.5.1. 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 area¹ and

¹ Built-up Area' means a city or town (where 'city' and 'town' have the meaning assigned to them by the Local Government Act 2001) or an adjoining developed area (defined in Article 3, Planning and Development Regulations 2001 as amended). An adjoining developed area can be taken to mean contiguous suburbs.

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.)

- 6.5.2. The application proposes 3 units well below the threshold of 500 dwelling units noted above. The application site has an overall stated area of 629 m² and in this context it is considered well below the applicable threshold.
- 6.5.3. The introduction of a residential development as proposed will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage and the nature of development proposed will not impact significantly upon the Z1 or Z2 zoning area.
- 6.5.4. The development proposes connecting to the public water and drainage services of Irish Water and Dublin City Council. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other developments in the general area. It would not give rise to a risk of major accidents or risks to human health.
- 6.5.5. The application site is not directly connected to a European Site and is located within an existing built up area. Any impacts to such sites not considered likely in an EIA context given the small scale of the development, its urban location, the hydrological distance to the sites and the likely interim dilution of any potential pollutants etc.
- 6.5.6. I consider that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that upon ‘Preliminary Examination’, an ‘Environmental Impact Assessment Report’ for the proposed development was not necessary in this case

7.0 The Appeal

7.1. Grounds of Appeal

A first-party appeal has been lodged by Virtus on behalf of the applicants. The grounds of appeal can be summarised as follows-

- The subject application sought to address the refusal reasons of 3621/22.
- The site is wholly underutilised and provides an excellent opportunity for appropriate and well considered infill/backland development.

- In order to address the first refusal reason a brief summary of legislation is set out including the interpretation of 'Owner' as per the Planning and Development Acts. The applicant declares they are the owner of the site. A report titled 'Legal Ownership' compiled by John O'Neil & Associates demonstrates the applicants ownership of the entire site.
- The appeal then discusses the requirement for letters of consent referring to detailed case law.
- The applicant is confident of ownership of the site and the application can not be considered frivolous or vexatious. Reference is then made to the provisions of Section 34 (13) of the Act. Permission does not automatically grant the right to develop.
- In relation to the second refusal reason the application proposes three modest dwellings in an underused, backland site.
- The appeal then discusses some of the relevant provisions of the Dublin City Development Plan.
- In terms of overlooking, unit 1 comprises a large west facing window c. 17.6m the rear of No.30 Irishtown Road. Section 15.11.4 of the DCDP allows for relaxation from the need for 22m separation distance. 17.6m is a sufficient distance to not impact residential amenity of No. 30. In terms of overlooking the private amenity space of No. 30 is considered sufficiently distant so as to not impact on the value of the amenity space. Section 15.13.4 provides houses shall be located less than 15 metres from the rear façade of existing dwelling and with a minimum rear garden depth of 7 metres. Unit 1 meets this test.
- The west facing elevation is heavily glazed. The applicants would accept a condition reducing the extent of glazing area.
- In terms of overbearing it is not considered the proposal will overbear any property to the north. The Square comprises development which would far exceed the proposal in terms of height. Similarly No. 30 Irishtown Rd would not be negatively impacted.

- The rear elevations of Brendan's Cottages are north facing and the proposal will not impact on daylight and sunlight. Many of these houses have extended extensively to the rear. The proposed houses are sensitively designed with pitched roofs towards St Brendan's Cottage to ensure the impact of overbearance is lessened. No. 6 Brendan's Cottage has a substantial two storey rear extension. A photo is supplied. The proposal will not overbear No. 6.
- Unit 2 is located to the north of No's 9-12 St Brendan's Cottages. Figure 6 of the appeal shows the siting and proximity of Unit 2 to the rear of the houses and private amenity spaces of Brendan's Cottage. Figure 7 a sectional drawing further demonstrates the negligible impact.
- Unit 3 is located to the north of No's 14-16 all of which have been extended to the rear. Figures 8 and 9 show the impact. It is considered the lack of windows facing the site and limited amenity space ensures the proposal will not be overbearing.
- Infill and backland sites are the most sustainable form of development as they utilise underused, services residentially zoned land. At times concessions will need to be made.
- The application proposes a sensitively designed residential development which sits well within the existing site and protects the amenity of neighbouring properties. On balance it is considered that the benefits of the proposed scheme outweigh any potential negligible impacts on overlooking or overbearing of neighbouring properties.

7.2. Planning Authority Response

- 03/03/23- The Board are requested to uphold the decision. If permission is granted the following conditions be applied- development contribution, a bond, contribution in lieu of open space and a naming and numbering condition.

7.3. Observations

7.3.1. Seven observations have been received from

- 1) Cristina Marini, No. 7 St. Brendan's Cottage
- 2) Deirdre Bloomer Daly & Finbarr Daly, No. 15 St Brendan's Cottage
- 3) Gillian Lawless & Brian Kealy, No. 9 St Brendan's Cottage
- 4) Joe Bonner Consultant on behalf of-
 - Genevieve MacKenzie, 8A The Square
 - David Morris, 8B The Square
 - Terry & Louise Finnie, 8C The Square
- 5) Christy Barry, No. 11 St Brendan's Cottage
- 6) Joe Bonner Consultant on behalf of-
 - Margaret O' Riordan, No.10 St Brendan's Cottage
- 7) Sharon Coffey, No.6 St Brendan's Cottage

. The pertinent observations raised can generally be summarised as follows-

- The applicants legal entitlement to make the application on lands in DCC's ownership to which they do not have consent.
- The proposal represents overdevelopment of the site, a significant increase in height, scale and massing from the existing sheds and its proximity to existing houses built along boundary walls with negatively impact existing amenity.
- The existing garden depth for No. 15 St Brendan's Cottage is not correctly shown in the drawing and is misleading.
- The proposal will impact daylight to existing properties and will result in overshadowing and overlooking.
- A 6.685m ridge will be visually obtrusive and overbearing.
- The proposal will negatively impact upon the value of property in the area.
- The proposal should be revised to three single storey dwellings as per Web1260/17 to the rear of No. 28 Irishtown Road.
- The car parking proposals represent a traffic hazard and there is insufficient parking for existing residents. Large vehicles including fire trucks will have difficulty accessing the site.
- Construction traffic and materials represent a hazard to existing residents.

- Means of escape from some bedrooms pose a fire safety risk.
- The Applicants assertion of impacts to the Square are challenged in relation to loss of light internally and externally.
- The proximity of the build to adjoining properties compromises and permanently restricts access to existing external walls, soffits, fascia gutters, drainage, service pipes and natural ventilation.
- The planning status of the shed which abutted the boundaries of No. 30 Irishtown Road and No. 8d The Square but is now demolished should be investigated. The exemption under Class 50 is challenged. The application should be rendered invalid.
- Ground floor windows in No. 10 St. Brendan's Cottages have not been considered in the submitted Daylight and Sunlight Assessment. The amenity space of No. 10 has also not been considered. The appeal seeks to address No. 10 and errs as the courtyard provides not just amenity space but a source of light for three internal rooms. As Unit 2 is proposed to the north and west of the rear of No.10 impacts would not be limited.
- A number of photographs from the rear of St. Brendan's Cottages are submitted in support of the observations.
- It is noted the observations generally favour proposals for single storey dwellings.

8.0 Assessment

8.1. Introduction

8.1.1. I have examined the application details and all other documentation on file including the Appeal and observations. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the substantive issues for this appeal are as follows-

- Principle of Development
- Refusal Reason 1

- Refusal Reason 2
- Flooding
- Other Matters
- Appropriate Assessment

8.2. Principle of Development

- 8.2.1. The majority of the application site is zoned Z1 ‘Sustainable Residential Neighbourhoods’ within the Dublin City Development Plan 2022-2028, with a stated objective *‘to protect, provide and improve residential amenities’*.
- 8.2.2. A small portion of the site, i.e. the two areas providing access and proposed car parking is located with lands with a zoning objective ‘Z2 - Residential Neighbourhoods (Conservation Areas)’, with a stated objective *‘To protect and/or improve the amenities of residential conservation areas’*.
- 8.2.3. ‘Residential’ is listed as a ‘Permissible Uses’ within both these zoning.
- 8.2.4. The proposed development can be considered a backland and infill development as per the provisions of Sections 15.5.2 and 15.13.4 of the DCDP. The application proposed three backland houses on an infill site on appropriately zoned land. In this context the proposal is acceptable in principle.

8.3. Refusal Reason 1

- 8.3.1. The Planning Authority’s first refusal reason details that the Applicants have not satisfied the Council that the application is been made by a person with sufficient legal interest in the lands or the consent of the person with sufficient legal interest has been submitted.
- 8.3.2. This is further justified in the Planning Report which refers to correspondence received from the Council’s Property Management Section which details that the applicant has not proven the adverse possession claim to the laneways (for the proposed access to the houses and proposed car parking areas) in the Land Registry. They argue that DCC does have some title interest in the laneways as

successor to the Pembroke UDC. I have not been able to identify a copy of this correspondence on the file or DCC's online planning application portal².

- 8.3.3. The Applicant's strongly challenge the refusal reason. They assert that the applicant has declared ownership in the application form and have submitted a detailed legal report setting out their ownership. They are confident in this regard and challenge any need for or claim a letter of consent is required. They argue there is nothing vexatious or frivolous in the application and refer to a number of legal precedents in this regard.
- 8.3.4. I have reviewed the Report titled 'Legal Ownership' compiled by John O'Neill & Associates Architects & Interior Designers Ltd. The information as set out is evidently persuasive. In particular I note Appendix D in which documentation is submitted showing a question submitted to the Chief Executive of DCC at the November 2020 Council Meeting as regards ownership of the lands. The Chief Executive Reply essentially concludes that it is not possible for DCC to claim clear unencumbered title to the land.
- 8.3.5. This in my mind, suggests the Council may not own the lands in question. Although I do accept the correspondence referred to in the Planning Report sets out that DCC does have some interest in the laneways as successor to Pembroke UDC.
- 8.3.6. It is clear there are issues relating to title of the application site land. Section 5.13 of the Development Management Guidelines 2007 deals with this very matter and clearly states-

"The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development."

- 8.3.7. Section 5.13 goes on to state-

² <https://planning.agileapplications.ie/dublincity/application-details/149196> (accessed 01/09/23)

“Only where it is clear from the response³ that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.”

8.3.8. Having considered all of the above I am satisfied the applicant has demonstrated sufficient legal interest to make the application and the Planning Authority’s first refusal reason should therefore be set aside and any grant of permission would in any event be subject to section 34 (13) of the Act.

8.4. Refusal Reason 2

8.4.1. The second refusal reason considers in the absence of compelling evidence the proposal would give rise to adverse overlooking and overbearing impacts on adjoining properties, would constitute overdevelopment of the site and would seriously injure the amenities and depreciate the value of property in the vicinity. As a result the proposal would be contrary to the Z1 and Z2 zoning objectives for the site and the proper planning and sustainable development of the area.

8.4.2. The Applicant’s appear to consider the only unit that can be consider to cause overlooking of neighbouring property is Unit 1, which they argue is sufficiently set back 17.6m from an opposing first floor windows in No. 30 Irishtown Road. They also indicate their willing to obscure the glass of the unit should the Board wish to impose a condition. In terms of overbearing they argue the design of each unit has been carefully considered to ensure they will not have an overbearing impact.

8.4.3. The application proposes three detached houses in a narrow plot of land enclosed by existing residential development on its south, west and northern elevations. The plot of land is narrow in width ranging from c. 6.33m to c. 6.055m. The houses are designed with pitch roofs reaching 6.75m to ridge and c. 4.5-4.7m at eaves level.

³ ‘Response’ refers to Further Information (FI). I note the Planning Authority did not seek FI in this application, but the very matter did form an FI request under the previous application on this site i.e. 3621/22 in which this title matter was raised.

The pitch is angled away from the north west and south east boundaries and existing residential properties.

Overlooking

- 8.4.4. Unit 1-3 proposes first floor windows facing east. These windows are set back 1.2m from the southern boundary and 0.8m from the east boundary. The east boundary of Units 1 and 2 are to be enclosed by 1.5m high obscure glass screen. These obscure screens directly bound private amenity space of proposed units 2 and 3 respectively. The windows they intend to screen are set back 0.8m. Subject to the screens being raised to 1.8m, I am satisfied there will be no undue overlooking of private amenity spaces of the proposed dwellings 2 and 3. Unit 3 faces east c. 3.5m of the boundary with Ringsend Park. It will not result in undue overlooking.
- 8.4.5. Should the Board decide to grant permission I recommend a condition be attached increasing the height of the obscure glass screen of the east elevation of Unit 1 and 2 in order to avoid overlooking of proposed private amenity spaces.
- 8.4.6. The provision of large 2.4m high windows to the east elevations of Units 1, 2 and 3 with a setback over ground floor provides the potential for a small roof terrace that could provide for undue overlooking of properties on St Brendan's Cottages. I am cognisant there is a need for an accessible and openable window to bedrooms as per the building regulation i.e. a requirement for escape purposes, as well as the planning need for internal light residential amenity purposes. It is therefore recommended, should permission be granted, that a condition be applied ensuring the north east facing window to the flat roof of all three units should not be used to provide access to the flat roof area for the use of that roof as a roof garden, roof terrace or any purposes detrimental to the residential amenity of neighbouring properties.
- 8.4.7. Units 1-3 propose a significant amount of glazing on the south west facing elevation drawing. Unit 1 is located a stated 17.6 m from the rear elevation of No. 30 Irishtown road which has a first floor window orientated towards Unit 1. Traditionally a 22m separation distance is required between first floor opposing windows⁴. Section

⁴ The draft Sustainable and Compact Settlements Guidelines for Planning Authorities were published on the 31/08/23. SPPR 1 intends to restrict objectives for separation distances exceeding 16m between first floor opposing windows. As this SPPR is Draft only and yet implementable, it is not appropriate to consider this standard at this time.

15.11.4 of the DCDP details that this may be relaxed if it can be demonstrated that the development is designed in such a way as to preserve the amenities and privacy of adjacent occupiers. The applicants consider a 17.6m separation distance is sufficient distance not to impact residential amenity but they have not detailed how the development is designed to preserve the amenities and privacy of No. 30 Irishtown Road.

- 8.4.8. They refer to section 15.13.4 of the DCDP which states- *“A proposed backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres”*. They argue the proposal meets this test. The opposing window of concern here is to the rear of No. 30 Irishtown Road. In this regard I am not convinced No 30 is the *“existing dwelling”* referred to in section 15.13.4. I also note section 15.13.4 requires applications for backland housing to consider the provision of *“adequate separation distances to ensure privacy is maintained and overlooking is minimised.”*
- 8.4.9. Having considered section 15.11.4 and 15.13.4 of the DCDP I am not satisfied that Unit 1 of the proposed development has been designed in such a way as to preserve the amenities and privacy of No.30 Irishtown Road and a separation distance of 17.6m is not considered adequate. I acknowledge a large part of the subject first floor glazing is to a first floor void over ground floor and there will be no potential for overlooking from this. However the majority of the glazed first floor elevation is to the main bedroom and the concern of overlooking to No. 30 is real as is perceived overlooking given the extent of glazing.
- 8.4.10. I note the applicants have indicated their willingness to accept a reduction in the size of the glazed area. Should the Board decide to grant permission I recommend a condition is attached seeking a reduction in the extent of glazed area and the obscuring of significant glazing to protect against undue overlooking of No. 30 Irishtown Road.
- 8.4.11. I consider the provision of obscure glazing screens (subject to condition of 1.8m in height) to windows on the east elevation of units 1 and 2 are suitable design measures to preserve the amenities and privacy of future occupants of unit 2 and 3 respectively and therefore the required separation distance can be relaxed as per section 15.11.4.

8.4.12. I also note units 1 and 2 propose small 5 and 9.1 sq.m court yards that will be overlooked in part from the first floor west facing windows of Units 2 and 3 respectively. Units 1 and 2 propose their main private amenity space to the west side of each house. This space will be 53.5 sq.m each. In this context I am satisfied the private amenity needs of the potential residents will not be significantly comprised by overlooking into the small courtyards and the proposal is acceptable in this regard.

8.4.13. I note the Planning Authority's refusal reason also specifically refers to overlooking to No's 8B and 8D and the adjacent cottages. I have considered these properties and other than some oblique overlooking from the first floor south west facing windows which is typical of most urban development types I consider there will be no undue overlooking to an extent warranting refusal.

8.4.14. Having considered all of the above I am satisfied that subject to conditions the proposed development will not lead to undue overlooking or undue perceived overlooking which would negatively detract from existing residential amenity of existing properties on Irishtown Road, St Brendan's Cottages, The Square or the proposed housing units themselves.

8.4.15. **Overbearing**

8.4.16. The application proposes three units with side elevation walls to be built just inside the site boundary. These walls will adjoin in part and in whole the rear of houses No's 6, 9-11 and 14-16 with the eaves rising to c. 4.4m before the pitch roof angles up to 6.75m.

8.4.17. The units are designed with an annex style feature to north east providing a narrower study area at ground level and bedroom at first floor. This has a flat roof with parapet 5.7m high. Each of these adjoins the north west boundary of the site. This area is set back of the boundary with St Brendan's cottage.

8.4.18. DCC have described overbearance in section 15.9.18 of the DCDP as-

"the extent to which a development impacts upon the outlook of the main habitable room in a home or the garden, yard or private open space service a home. In established residential developments, any significant changes to established context must be considered. Relocation or reduction in building bulk and height may be considered as measures to ameliorate overbearance."

- 8.4.19. In this regard, I am satisfied the proposed development does not significantly or negatively impact upon the outlook of the main habitable room in the houses to St Brendan's Cottage as the main outlook from such rooms in these properties is most likely towards St Brendan's Cottage and the existing green area of public open space. Furthermore, I am satisfied the main habitable rooms of the Square do not face towards the site. In terms of the rear facing outlook of houses on Irishtown Road there is a sufficient separation distance to ameliorate any such outlook.
- 8.4.20. There is no doubt the proposed development will impact the outlook from rear private amenity spaces of houses along St Brendan's Cottages and to a lesser extent No. 30 Irishtown Road. The extent of this impact needs to be considered in the context of the size and usability of these spaces, the already enclosed nature of these spaces, the proximity of the highly visible existing gables of houses in The Square and the current unsightly and dilapidated condition of the site and the existing accesses points.
- 8.4.21. The Board are reminded the site is located with Z1 lands save for a small part at the proposed entrances which are zoned Z2. Z2 lands are Residential Conservation areas. As per section 15.15.2.2 of the DCDP these contain areas of extensive groupings of buildings, streetscapes, features etc and associated open spaces of historic merit which all add to the special historic character of the city. Policy BHA9 seeks to protect the special interest and character of all Dublin's Conservation Areas including Z2.
- 8.4.22. Save for the existing gated entrance areas the site is not overly visible from St Brendan's Cottage i.e. the Z2 areas. The existing entrances and gates are a poor addition to the streetscape and detract from the overall quality of this conservation area. The existing changes in roof levels and extensions to many of the properties from No. 6- 16 detract from the uniformity of the row of cottages and their architectural quality. The large and prominent side gables of 8B and 8A the Square are very visible over the roof top of the cottages and are not visually sympathetic.
- 8.4.23. The proposed houses will not be overly visible from the public roads in St. Brendan's Cottages and where they may be visible their roof profile and materials would help ameliorate the dominant and unattractive gable elevations of the Square buildings.

- 8.4.24. The proposed development at the site entrances would present a significant visual improvement on the existing poorly maintained gated arrangements to the site. In this context it is considered the proposal would make a positive contribution to the character, function and appearance of the Z2 Conservation Area and its setting in accordance with Policy BHA9.
- 8.4.25. Overall judgments like these are always difficult given the nature of subjective opinions. For me, the site is in very poor condition in a very attractive residential area surrounded by differing house types. Without development the site will only deteriorate further to the detriment of all residents in the area. The site is zoned for residential development and the proposed units are well considered and designed given the restrictive nature of the site.
- 8.4.26. I have no doubt and fully accept the extent of impact would not be as significant if the proposed houses were single storey. However, on balance and noting that the DCDP only considers the extent of impact from the main habitable room and private amenity space for overbearance, the extent of impact is not considered so significant from a negative perspective to justify refusing three houses on suitably zoned and serviced lands having regard to the increasing emphasis on compact development and the current housing crisis.

8.4.27. **Overdevelopment**

- 8.4.28. The Planning Authority's second refusal reason details the impact of overlooking and overbearance constitutes overdevelopment of the site and would depreciate the value the value of property in the vicinity. Section 15.5.6 and Appendix 3 of the DCDP details that-

“Site coverage is a control for the purpose of preventing the adverse effects of over development”

- 8.4.29. Table 2 provides Indicative Site Coverage standards for the 'Central Area' i.e. 60-90%. Section 10 (h) of the application from indicates a proposed site coverage of 37.4%. The application proposes three two bedroom houses of c. 112.7 sq.m -116 sq.m with three large areas of private amenity space ranging from c. 50 – 53 sq.m, three smaller amenity spaces of c. 5-32 sq.m and three car parking spaces. In this context the proposed development is not overdevelopment of the site.

8.4.30. I see no reason why the proposed development would devalue property in the vicinity. It could be argued redeveloping an underutilised and decrepit looking site would improve the site to an extent that would be more amenable to prospective home buyers in the area.

8.4.31. **Conclusion**

8.4.32. Having considered all of the above, I am satisfied that in this context, the proposed development would not give rise to adverse overlooking and significantly negative overbearing impacts on neighbouring property. It would not constitute overdevelopment of the site and therefore would not significantly injure existing amenities. The Planning Authority's refusal reason should therefore be set aside and permission could be granted.

8.5. **Flooding-**

8.5.1. The site is located within Flood Zone B as per Map F Volume 7 of the DCDP 2022-28. The Planning System and Flood Risk Management Guidelines 2009 detail that Flood Zone B is where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 and 1% or 1 in 100 for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 for coastal flooding).

8.5.2. Policy SI16 Site-Specific Flood Risk Assessment of the current DCDP states-

Proposals which may be classed as 'minor development', for example small scale infill, extensions to houses and small-scale extensions to existing commercial and industrial enterprises in Flood Zone A or B, should be assessed in accordance with the Guidelines for Planning Authorities on the Planning System and Flood Risk Management and Technical Appendices (2009), as revised by Circular PL 2/2014 and any future amendments, with specific reference to Section 5.28 and in relation to the specific requirements of the Strategic Flood Risk Assessment.

I am satisfied the proposed development can be considered a small scale infill proposal and therefore a 'minor development' as per the DCDP. Section 5.28 of the 2009 Guidelines states-

Applications for minor development,, are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances.....

a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. These proposals should follow best practice in the management of health and safety for users and residents of the proposal.

- 8.5.3. The Applicants submitted a detailed and comprehensive Site Specific Flood Risk Assessment (SSFRA) prepared by 'Walsh Design Group' (WDG). They consider the proposal complies with the requirement of the Justification Test of the 2009 Guidelines and a number of mitigation measures are proposed.
- 8.5.4. I note DCC's Drainage Division sought further information in relation to flooding. The Planning Authority did not raise flooding concerns in their refusal reasons.
- 8.5.5. Having considered all of the above and in particular Policy SI16 where small scale infill is considered a minor development, and having regard to section 5.28 of the Guidelines I am satisfied the proposal on an existing underutilised brownfield and backland site located on suitably zoned land in close proximity to public transport represents an appropriate use of the site and in itself is unlikely to raise significant flooding issues such as obstructing important flow paths or introducing a significant additional number of people into flood risk areas or entail the storage of hazardous substances. Subject to condition the proposed development is acceptable at this location.

8.6. **Other Matters**

The following matters have also been raised in the observations.

- a) Daylight and Sunlight- No 10
- i. The application is accompanied by a Daylight & Sunlight Study prepared by Integrated Environmental Solutions Limited. The Planning

Authority have not raised any Daylight or Sunlight concerns in their refusal reasons.

- ii. I have reviewed the submitted report which has carried out the following assessments- Shadow analysis, Sunlight to Amenity Spaces, Sunlight to Existing Buildings, Sunlight to Proposed Buildings, Daylight to Existing Buildings and Daylight to the proposed Development. These assessments have generally been carried out having regard to the provisions of BRE 209. I consider the report a robust, comprehensive and generally accurate assessment of the issues. Following my own rudimentary assessment of the tests above I have not been able to identify any significant area of concern to the terraces of houses along St Brendan Cottages.
- iii. However, I note the Report has not identified the windows surrounding a small courtyard of House 8d. Having reviewed the online drawings for this house- WEB1260/17⁵ I note the windows provide natural light to a bedroom, hallway and the kitchen area. The kitchen area is also day lit from its south west facing elevation so I am satisfied the only area of concern is the bedroom. This matter has not been raised by DCC or an observer and as such would be a '**New Issue**' and the Board may wish to seek the views of the parties. However given its orientation relative to proposed unit 1, the already enclosed size and nature of the courtyard and the development actually permitted (with a tree), I am not convinced proposed unit 1 would significantly detract access to day light to this bedroom.
- iv. I also note concerns raised by the observer from No. 10 St. Brendan's Cottage. The observer details three windows in a court yard that have not been identified as a 'Potential Sensitive Receptor' for loss of daylight and sunlight. I inspected this space in person and can confirm three windows within a narrow space c. 4m deep. It is enclosed on all boundaries by the existing buildings and neighbouring property. I note photographs of this space are submitted in the original submission to

⁵ <https://planning.agileapplications.ie/dublincity/application-details/121646> (accessed 03/09/23)

DCC (Page 15 & 16) (my own are also provided separately). Only one window is orientated directly towards proposed Unit 2 and therefore is the only window warranting an assessment of diffuse daylight as per BRE209.

- v. The proposed site plan drawing suggests the depth of this space to be c 3.4m. I have measure it at c. 4m. Unit 2 Section A-A drawing through number 10 and the site suggests the enclosed part of the rear extension to be c. 2.7m high and I measured a similar height. It appears to me that the centre point of the rear facing window (c. 1.5m) would not be able to subtend to the ridge height of proposed unit 2 in accordance with Figure 14 of BRE209 as it is already obstructed by the existing rear extension of No. 10. Furthermore, I note this window serves a living/dining area which is also served by a window to the front of No. 10. All other windows orientated toward the site are upstairs windows. Therefore I am satisfied Unit 2 would not lead to a significant loss of diffuse daylight to No. 10 St Brendan's Cottage.
- vi. In terms of a loss of existing sunlight to the interior of No. 10 I note summary box 3.2.13 of BRE209 states-

'If a living room of an existing dwelling has a main window facing within 90 degrees of due south and any part of a new development subtends an angle of more than 25 degrees to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected.'

- vii. All rear windows to No. 10 and those along the rear of St Brendan's Cottage are orientated towards the proposed development but do not face within 90 degrees of due south. Accordingly I am satisfied that the proposed development will not adversely impact upon sunlight to the interior of No. 10 or St Brendan's Cottages.
- viii. In terms of a loss of sunlight to the amenity space i.e. courtyard Summary Box 3.3.17 recommends that at least half of the amenity space should receive at least two hours of sunlight on March 21st (the

Equinox) and in scenarios where detailed calculations cannot be carried out it is suggested that the centre of the area should receive at least two hours of sunlight on March 21st. Having inspected the site, reviewed the submitted shadow analysis and having considered the orientation of the site to the north and west of the courtyard in number 10, I am satisfied the proposed development will not significantly obstruct sunlight as per the recommendations of BRE209 on March 21st.

b) Traffic Related Matters-

- i. I have considered the traffic concerns raised and note the application proposes three car parking spaces, one per each unit and all accessed from existing public roads. I do not share observers concerns as regards the proposal's impact upon existing parking in the area. During my inspection I noted two cars were parked on the road area in front of the proposed north east area of car parking and the proposal would significantly improve this situation.
- ii. The applicants have submitted a Swept Path Analysis drawing for Fire Appliance vehicles. Subject to appropriate car parking on the public street (a matter which the applicant cannot be expected to resolve) I see no reason why the site is not accessible for large vehicles including emergency services and construction related vehicles..

c) Errors in drawings-

- i. I note concerns raised by the Observer in relation to errors in the application drawing as regards the works permitted under planning reference number 3172/21 at No.15 St Brendan's Cottage. I have viewed these drawings on DCC's online planning portal as well as the works from the public areas around No. 15. I am satisfied these inaccuracies do not have a material bearing on this assessment and the extent of the works have been considered in section 8.4above.

d) Proximity to existing boundaries of 8A and 8B The Square-

- i. An observer raises concerns relating to the proximity of proposed unit 2 and 3 to the existing gables of 8A and 8B. They consider the proposal compromises and permanently restricts access to existing external walls, soffits, fascia gutters, drainage, service pipes and natural ventilation.
 - ii. The floor plan and section drawings show the proposed units are to be developed inside existing boundary walls, wholly within the application site and not directly adjoining 8A or C The Square. There is no intrusion proposed outside of the application site.
 - iii. I inspected the site gables of 8A and 8C adjoining the site and no part of these buildings appear to overhang into the application site. In this regard, I see no reason why the proposed development would impact drainage installations of existing houses 8 A and B.
 - iv. I did observe a non-covered outlet/vent on the gable of 8B. I accept that access to this gable wall will be restricted by the proposed build structure, but a space should still remain between. Notwithstanding the above, I am satisfied that this concerns would in any event be civil matters between the parties having regard to the provisions of the Land and Conveyancing Law Reform Act, 2009.
- e) Unauthorised development.
- i. I note concerns raised in relation to the demolition of an existing shed on site and how exemptions in Class 50 of the Planning and Development Regulations may not apply to the demolition on this site. Matters of unauthorised development are ones for the Planning Authority and not the Board. I do not consider the issue raised to have a significant bearing upon this assessment.

8.7. Appropriate Assessment

- 8.7.1. Having regard to the nature and scale of the proposed development, the distance from the nearest European site and proposed connection to existing public services such as water supply and drainage, no Appropriate Assessment issues arise, and it

is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 Recommendation

9.1. I recommend that permission is granted subject to the following conditions-

10.0 Reasons and Considerations

10.1. Having regard to the provisions of the Dublin City Development Plan 2022-2028, the pattern of development in the area, the infill and backland nature of the application site, the nature and scale of the proposed development and the Z1 and Z2 zoning objectives for the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities and/or depreciate the value of property in the area, would not be prejudicial to public health and would not result in a traffic hazard and 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 and by the further plans and particulars received by An Bord Pleanála on the 24th day of November 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

- The obscure glass screens on the north east facing elevation at first floor level of Units 1 and 2 shall be raised to a minimum height of 1.8m
- The north east facing windows to the flat roofs of all three units should not be used to provide access to the flat roof area for the use of that roof as a roof garden, roof terrace or any purposes detrimental to the residential amenity of neighbouring properties.
- The south west facing window at first floor to the bedroom of Unit 1 shall be reduced in size and finished with permanently obscured glazing.

Revised drawings and details showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenity of adjoining properties.

3. All mitigation measures in the Flood Risk Assessment submitted to the planning authority on the 24th day of November 2022, shall be agreed with the Planning Authority prior to commencement of development and thereafter implemented in full and shall be supervised by a suitably qualified ecologist and bonded engineer.

Reason: In the interest of environmental protection, public health and orderly development.

4. Details of the materials, colours and textures of all the external finishes to the proposed houses shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. The site entrance, access driveway and roadside boundary treatment serving the proposed development including the provision of a footpath, dishing and

kerbs within the side boundary shall comply with the detailed requirements of the planning authority for such works. Proposals shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

7. Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Uisce Éireann.

Reason: In the interest of public health.

8. (a) The parking spaces serving the residential units shall be provided with functional electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) No car parking spaces shall be sold, rented or otherwise sub-let or leased.

Reason: in the interest of sustainable transportation.

9. Proposals for naming and numbering of the proposed scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the house numbers, shall be provided in accordance with the agreed scheme. Any proposed name(s) 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 legibility.

10. Water supply and drainage arrangements, including the disposal of surface water which shall also provide for appropriate Sustainable Urban Drainage Systems (SuDS), shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

11. 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.

12. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan and Method Statement 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 noise and vibration management measures and off-site disposal of construction/demolition waste.

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

13. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition

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

Reason: In the interest of sustainable waste management

14. Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house unit), pursuant to Section 47 of the Planning and Development Act, 2000, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

15. 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.

16. 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 the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to 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.

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

Adrian Ormsby
Planning Inspector

03/09/2023