

An  
Bord  
Pleanála

## Inspector's Report ABP-315883-23

<b>Development</b>	Demolition of the existing building (comprising the residential dwelling known as 'Dunelm') and structures on site and the construction of a Build-to-Rent (BTR) residential development, comprising 63 no. BTR apartments
<b>Location</b>	lands at 'Dunelm', Rydalmount, Milltown Road, Dublin 6
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	4578/22
<b>Applicant(s)</b>	
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First & Third Party
<b>Appellant(s)</b>	1. Westridge Milltown Limited 2. Richview Residents Association 3. Paul Kelly 4. John Whelan and Joanne Hanna and others
<b>Observer(s)</b>	Jackie Frawley

**Date of Site Inspection**

2<sup>nd</sup> October and 16<sup>th</sup> October 2023

**Inspector**

Irené McCormack

**DECISION QUASHED**

## 1.0 Site Location and Description

- 1.1. The appeal site is located in Milltown, Co. Dublin. The site contains a modern two-storey dwelling and domestic outbuildings known as 'Dunlem'. The site is located to the north of Milltown Road (R820) and is located to the east of the Green Luas line, to the south of residential dwellings Nos 1 and 2 Rydalmount and east of residential dwelling 'Kadiv' at Rydalmount, Milltown Road. There are a number of apartment buildings in the vicinity of the site ranging in height from 4 to 6 storeys,
- 1.2. The site has a stated area of 0.3174ha. The site has frontage onto Milltown Road and onto a private access road along the eastern site boundary. The site rises away from the public road and occupies an elevated position relative to the Dodder River valley to the south of the site. A 47m long retaining wall extends along the southeastern access road. There are a number of mature trees on site along the southeastern boundary and along part of the northern and western boundaries.
- 1.3. Milltown Luas station is approx. 45m north of the site and is accessed via Richmond Avenue South, a distance of approx. 200m from the site entrance. There are a number of services and amenities within walking distance of the site and on the south side of Milltown Road is the Dodder River Park.

## 2.0 Proposed Development

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

- the demolition of the existing building (comprising the residential dwelling known as 'Dunlem') and structures on site and the construction of a Build-to-Rent (BTR) residential development, comprising 63 no. BTR apartments and all associated site works.
- The development consists of two Blocks, Block A to the front of the site fronting Milltown Road and Block B to the rear (north) of the site.
- Access to the Block A is from Milltown Road. Access to Block B is via the existing vehicular entrance serving the site to the north via an existing private lane running along the eastern and part of the northern site boundary.

### 2.1. Development Parameters Summary:

<b>Application Area</b>	<b>Site</b>	0.3147 ha (including 0.088 ha of DCC lands for public realm works (see works to public road below))
<b>No. Units</b>		63 no. units
<b>Demolition</b>		The residential dwelling known as 'Dunelm' and structures on site, with a total combined gross floor area (GFA) of 539 sq.m;
<b>Mix</b>		5 no. studio units (8%) 27 no. 1 bed units (43%) 30 no. 2 bed units (47%) and 1 no. 3 bed unit (1%)
<b>Plot Ratio</b>		Plot Ratio- 2.3  Total GIA (5,215 m2) / Net site area (2,267 m2) (applicant ownership boundary)
<b>Site Coverage</b>		47%
<b>Density</b>		278 uph
<b>Building Heights</b>		Block A – part 4 to part 6 storey, over lower ground floor and basement level building (maximum of eight levels to Milltown Road) Block B – 4 storeys  Maximum height of 19.86m (Block A)
<b>Dual Aspect</b>		49.2% (31 units)
<b>Car Parking</b>		12 no. car parking spaces, including: • 10 no. at basement • 2 no. surface car parking spaces (Ratio of c. 0.2 spaces per unit) The 12 no. spaces includes 10 no. Electric Charging, 4 no. car club spaces and 2 no. accessible spaces.
<b>Cycle Parking</b>		98 no. cycle parking spaces at basement + 32 no. at surface, including: • 98 no. secure spaces at basement level (including 2 cargo) • 32 visitor spaces at surface level
<b>Resident Amenities and Support Facilities</b>	<b>Support and Facilities</b>	Resident support and amenity facilities for the BTR residential units with a total floor area of 252.5 sq.m, including a large item storage area, bike and bin store at basement level, a pavilion communal amenity building, concierge/management area and foyer area at ground floor level and lounge / residential function room at fifth floor level
<b>Public and Communal Open Space</b>		No public open space – a financial contribution in lieu can be applied if considered necessary by the Planning Authority.  691 sq.m communal open space including external areas at ground (573 sq.m) and fifth floor level (118 sq.m)
<b>Children's Area</b>	<b>Play</b>	85 sq.m

2.2. 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.

- 2.3 The Planning Authority sought Further Information on 21<sup>st</sup> September 2022 relating to bulk and scale and additional CGI images, concerns about two blocks and their relationship to adjoining boundaries, revise landscaping proposals, details of materials and finishes and details regarding private access road -ownership and right of way. The first party submitted a response on 22<sup>nd</sup> December 2022 reducing the scheme from 65 units to 59 units. The Planning Authority issued a Notification to Grant on 27<sup>th</sup> January 2023.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Dublin City Council issued a decision to grant permission subject to 23 new conditions.

##### 3.1.1. Planning Reports

###### Planning Officers Report

- Referencing the further information issued and response received, the PA maintain their concerns as regards the bulk, scale and massing and visual amenity in relation to the overall scheme with the siting of the two blocks with an interconnected walkway.
- In addition to concerns about proximity of adjoining boundaries and quality of communal open space the PA considered it appropriate to remove block B from the development, reducing the number of units by four, resulting in a more defined communal area and improved aspect for block A.
- To further deal with the overscale of the development the top floor of Block A was reduced by the omission of one 2 bed unit identified as A.5.58.
- The PA further noted that the amendments would address concerns raised by the Transportation Division in relation to emergency access to Block B and the lack of car parking proposed.
- Regarding the right of way, it was noted that the applicant submitted information referencing the right to pass and repass with or without vehicles along the access road to the public road, and to pass and repass on foot to the Milltown Railway Station.
- The planning authority concluded that the proposal is in line with the residential

zoning of the site and the proper planning and sustainable development of the area.

The planning authority decision to grant of permission subject to 23 no. conditions.

These are broadly standard in nature. Conditions of note include:

**Condition no. 2** relates to development contributions.

**Condition no. 3** relates to contribution in lieu of public open space.

**Condition no. 4** relates to cash deposit or bond for the satisfactory completion of the development.

**Condition no. 5** relates to a tree bond.

**Condition no. 6** stipulates the omission of Block B from the scheme in its entirety along with the connecting walkway and a revised landscaping scheme which incorporates these lands into their communal open space allowing for a single 100sq.m designed play.

**Condition no. 7** stipulates the removal of one no. 2 bed unit identified as A.5.58 from the top floor of Block A.

**Condition no. 16** relates to the requirements of the Transportation Division.

**Condition no. 17** relates to the requirements of TII.

**Condition no. 22** relates to archaeology.

**Condition no. 23** relates to Part V.

### 3.1.2. Other Technical Reports

#### **Parks, Biodiversity & Landscape Services** (Report dated 25/01/2023)

The Parks Service set out that they have reservations due to the high loss of significant trees proposed which will negatively impact the local amenity. Landscape conditions recommended, in addition to tree protection, tree bond and a contribution in lieu of public open space.

#### **Transport Planning Division** (Report dated 21/01/2023)

Parking is considered low, and a Car Parking Management Plan is required. Access to the site is constrained. Schedule of conditions included in the report. Recommendation of TII also included.

**Drainage Division:** No objection subject to conditions.

**Archaeology** (Report dated 13/09/2022): No objection subject to conditions.

**Environmental Health** (Report not dated): No objection subject to conditions.

### 3.2. Prescribed Bodies

**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.

### 3.3. Third Party Observations

The PA in their assessment state that a number of valid observations were made. These include submission from local residents and local resident groups. Issues raised in the submissions included inter alia the following:

- Design – building alignment, height and scale.
- Density
- BTR typology
- Lack of family units
- Visual impact assessment
- Traffic and transportation concerns
- Residential amenity
- Concern over AA screening report
- Proximity to Viaduct (Protected Structure)
- Archaeology

## 4.0 Planning History

### Appeal Site

**DCC Reg. Ref. 2979/18** – Permission granted on 29<sup>th</sup> June 2018 for internal & external alterations to exist. 2-storey detached dwelling, and for Retention of attic conversion.

### Adjoining

None recent

## 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 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.

5.1.4 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.

## 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 2<sup>nd</sup> of November 2022, and it came into operation for this area as of the 14<sup>th</sup> of December 2022.

### Zoning

Z1 – Sustainable Residential Neighbourhoods with a stated objective '*to protect, provide and improve residential amenities*'.

Build to Rent is open for consideration under the Z1 zoning objective.

Built Heritage - The site sits to the east of the Nine Arches viaduct, a Protected Structures (RPS ref. 886) and to the north of Protected Structure (RPS 5254) Laundry Stack, located on the opposite side of Milltown Road.



( Archaeology -The southern part of the site is partially within the zone of archaeologically potential associated with a millrace that ruins into Darty Due Works (DU022-096).

**Relevant policies and standards of the Dublin City Development Plan 2022-2028 include:**

Section 2.3 Settlement Strategy

Section 2.7.2 Active Land Management –

- *CS07 Promote Delivery of Residential Development and Compact Growth* - To promote the delivery of residential development and compact growth through active land management measures and a co-ordinated approach to developing appropriately zoned lands aligned with key public transport infrastructure, including the SDRAs, vacant sites and underutilised areas.

Chapter 4 Shape and Structure of the City.

This chapter includes SC10 (urban density), SC23 (Design Statements)

Section 4.5.4 of the Development Plan, set out the Planning Authority's strategy and criteria when considering appropriate **building heights**, including reference to the performance-based criteria contained in the **appendix 3 to the Development Plan**.

Chapter 5 Housing

QHSN3 (Housing Strategy & HNDA), QHSN10 (urban density), QHSNO11 (universal design), QHSN26 (High Quality Apartment Development), QHSN47(High Quality Neighbourhood and Community Facilities),

Under housing policy QHSN2 of the Development Plan, the Planning Authority will have regard to various Ministerial Guidelines, a number of which are listed in Section 6.1 above. Policy QHSN10 of the Development Plan promotes sustainable densities with due consideration for design standards and the surrounding character.

Section 5.5.7 sets out that *it is recognised that Build to Rent (BTR) serves an important role in meeting housing demand and can fill a gap in tenure mix in established areas of owner-occupier housing.*

**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 over concentration 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

**QHSN41 - Built to Rent Accommodation** - To discourage BTR Accommodation schemes of less than 100 units due to the need to provide a critical mass of accommodation to provide a meaningful provision of communal facilities and services. Smaller BTR accommodation schemes with less than 100 units will only be considered in exceptional circumstances and where a detailed justification is provided.

QHSN42 – Relates to fostering community both within a BTR scheme and existing community.

QHSN44 relates to avoiding the proliferation and concentration of clusters.

In addition, Chapter 5 outlines a range of policies and objectives aimed at promoting regeneration, urban consolidation, densification, and healthy placemaking.

Chapter 11 Built Heritage and Archaeology

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

- BHA26 – Aims to protect and preserve archaeological heritage.

Other relevant sections of the Development Plan include:

Section 4.5.3 – Urban Density (policies SC10, SC11, SC12 and SC13);

Section 15.5.2 Infill Development states - 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.

Section 15.8 - Residential Development.

- Table 15-4: Public Open Space Requirements for Residential Development

Section 15.9 – Apartment Standards.

Section 15.10.1 - Design Standards relating to SPPR 7 and SPPR 8 of the Sustainable Urban Development Design Standards for New Apartments requirements for “Build to Rent” developments.

15.10.2 Communal and Public Open Space -All Built to Rent developments will be required to provide for the same quantum of external communal open space and public open space as set out for standard apartment developments.

Appendices

Appendix 3. Achieving Sustainable Compact Growth Policy for Density and Building Height in the City.

There are considered to be **three general categories of height** in the Dublin Context. Of relevance to the subject site is:

- **Prevailing Height:** This is the most commonly occurring height in any given area. It relates the scale, character and existing pattern of development in an area. Within such areas, there may be amplified height. This is where existing buildings within the streetscape deviate from the prevailing height context, albeit not to a significant extent, such as local pop up features. Such amplified height can provide visual interest, allow for architectural innovation and contribute to a schemes legibility.

Section 4.0 *The Compact City – How to Achieve Sustainable Height and Density establish* stipulates that the is 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 including:

- Bus connects/Core Bus Corridors (CBC's)
- Luas
- Metrolink
- DART

Development proposals will primarily be determined by reference to the proximity of new public transport infrastructure and to the area character. Locations for intensification must have reasonable access to the nearest public transport stop. In line with national guidance, higher densities will be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station in the plan. Highest densities will be promoted at key public transport interchanges or nodes.

**Table 3** of Appendix 3 sets out 10 *performance-based criteria in Assessing Proposals for Enhanced Height, Density*

Section 3.2 Density -As a general rule, the following density ranges and Plot Ratio standards will be supported in the city.

**Table 1: Density Ranges**

Location	Density Range (units per ha)
City Centre and Canal Belt	100-250
SDRA	100-250
SDZ/LAP	As per SDZ Planning Scheme/LAP
Key Urban Village	60-150
Former Z6	100-150
Outer Suburbs	60-120

**Table 2: Indicative Plot Ratio and Site Coverage**

Area	Indicative Plot Ratio	Indicative Site Coverage
Central Area	2.5-3.0	60-90%
Regeneration Area	1.5-3.0	50-60%
Conservation Area	1.5-2.0	45-50%
Outer Employment and Residential Area	1.0-2.5	45-60%

## Appendix 5 Transport and Mobility: Technical Requirements

The site is located in **Parking Zone 2**. Parking Zone 2 occurs alongside key public transport corridors. Appendix 5 Table 2: *Maximum Car Parking Standards for Various Land Uses* establishes 1 bed per dwellings in Zone 2 for Houses/Apartment/Duplexes

Section 4.0 states that a **relaxation of maximum car parking standards** will be considered in Zone 1 and Zone 2 for any site located within a highly accessible location. Applicants must set out a clear case satisfactorily demonstrating a reduction of parking need for the development based on the following criteria:

- Locational suitability and advantages of the site.
- Proximity to High Frequency Public Transport services (10 minutes' walk).
- Walking and cycling accessibility/permeability and any improvement to same.
- The range of services and sources of employment available within walking distance of the development.
- Availability of shared mobility.
- Impact on the amenities of surrounding properties or areas including overspill parking.
  - Impact on traffic safety including obstruction of other road users.
- Robustness of Mobility Management Plan to support the development.

Appendix 13 Guidelines for Childcare Facilities.

Appendix 16 Sunlight and Day Light.

### 5.3. **Natural Heritage Designations**

The river Dodder is located 42m south of the site. The nearest Natura 2000 site is South Dublin Bay SAC at a distance of 3.2km and North Dublin Bay SAC at a distance of 7.3km.

### 5.4. **Screening for Environmental Impact Assessment**

The application addresses the issue of EIA within an EIA Screening Report that contains information to be provided in line with Schedule 7A of the Planning Regulations. I will address this matter in more detail in Section 9.0 of this report.

## 6.0 **The Appeal**

## 6.1. Grounds of Appeal – Third Parties

Three no. third party appeals have been received in respect of Dublin City Council's recommended decision to grant permission from:

1. Richview Residential Association
2. Paul Kelly, 4 Churchfields, Milltown Bridge Road, Dundrum, Dublin
3. John Whelan and Others, C/o Marston Planning Consultancy, 23 Grange Park, Foxrock, Dublin 18.

There is overlap between the grounds of appeal raised by appellants, for clarity I have combined the submissions. The grounds of appeal are summarised as follows:

### Density

- The density is twice that allowed in the area in the DCC Development Plan 2022-2028.
- The net residential density a c. 278 units amounts to serious overdevelopment.
- Excessive density is evident by the PA's removal of Block B

### Building Height

- Development is contrary to section 15.5.2 of the CDP. Disregards the existing site context, is excessive in scale, mass, height and deprives existing residents of their privacy.
- The scale is incongruous

### BTR

- Contrary to Section 15.10 of CDP 2022-2028 - The CDP establishes that there should not be an over-concentration of BTR in one area and that proposals over 100 units will be required to provide 60% minimum standard apartments. Whilst less than 100 units it is set out that the principle should be considered here.
- The appeal queries why the Council changes their minds as regard BTR development as the Development Plan seeks to avoid over proliferation. Reference to other BTR developments in the area.

### Public Open Space

- Clearly the Council is seeking a contribution rather than insisting on their public open space guidelines.
- There are no amenities in the development.
- Contrary to Section 15.10.1 and 15.10.2 of the CDP

#### Access and Traffic

- No meaningful justification has been provided for the lack of car parking. The lack of car parking provided will give rise to overflow car parking in the surrounding area with the potential to result in a traffic hazard and impeded access to surrounding properties.
- The site is 280m from the Luas and not 50m as stated in the application.
- Traffic Assessment carried out during covid restrictions. This raises concerns as to the accuracy of the conclusions reached. The Building Height Guidelines (2018) promote building higher densities but caution that high densities must have regard to locational context, availability of public transport and other associated infrastructure.
- Reference to *Ballyboden Tidy Town V An Bord Pleanala.....(Record no. 2020/816JR)*. It is argued that the applicant has failed to consider other permitted or awaiting decision developments between Milltown and Dundrum that will also utilise the Luas. Any decision needs to be made based on current capacity.
- Inadequate transport links to Milltown – infrequent bus services
- Increase in traffic including cyclists on the narrow laneway with a serious incline.
- Currently laneway is too narrow to accommodate large increase in traffic. Two cars cannot pass let alone a delivery truck. Query accuracy of swept path analysis submitted.
- The appeal from Paul Kelly sets out that the laneway is owned by the appellant's mother, Bernadette Kelly. The first party claim to own the land to the wall. This conflicts with the appellant's understanding. It is set out that Bernadette Kelly owns the freehold title to the lease from 1862 pursuant to vesting certificates to Rydalmount House.
- The entrance is on a blind corner.
- Traffic hazards will be compounded by the 18-month construction programme.

### Visual Impact and Impact on Built Heritage

- Negative impact on Nine Arches Bridge and Chimney Stack
- It is set out that the impact from a visual perspective on the Viaduct will be significant/profound due to the character, magnitude, duration and sensitivity of the impact. The development would be contrary to Policy BHA2 and BHA9.
- Existing trees do not add adequate screening and some trees identified as screening are outside of the site boundary and cannot be relied on for screening.
- The adjoining Shanagarry development is set back 75m from the development.

### Residential Amenity

- It is set out that the proposed development will have a negative impact on the residential and visual amenity of third-party adjoining properties, in particular no's 1 and 2 Rydalmount House and Kadiv.
- No's 1 and 2 Rydalmount House and Kadiv will be overlooked and notwithstanding any changes conditioned there will be a perception of being overlooked by the development. The Monterey Cypress screening along the northern boundary is over exaggerated.
- Block A will cast a shadow across the garden of the properties and a further loss of trees will compound this and emphasize the overbearing impact.
- Traffic Hazard owing to the capacity of the laneway to accommodate additional traffic with two blind bends and a serious incline.
- Regarding the removal of the upper floor unit -this raise concern that this area will be used as a wrap around terrace, associated noise disturbance etc.
- The development represents poor amenity for the 4 single aspect units on the ground floor of Block A.

### Childcare and Schools

- There is no creche or school availability in the area. Residents will have to rely on buses if the Luas does not service their needs.
- Lack of other services and amenities immediate to the site.

Flood Risk – Concerns regarding increase in surface water run-off as a result of the development and the potential to cause flash flooding downstream. Condition no. 20 not sufficient to address these concerns.



Inadequacy of Assessment- Concerns raised about the EAIR screening. It is considered that the cumulative impact of the proposal was not adequately assessed.

Excessive Loss of Trees -77% tree removal. Any new planting will not provide that same carbon capture.

Negative Impact on Property Value

Post Planning -Need to address access and fire safety concerns in the event planning is granted that is not reliant of the laneway.

Site Notice – incorrectly described that site as east of Kadiv and not west.

Other Matters

- Site not a brownfield site as there is an existing house on the site.
- No mention as to who will be buying the property. Concerning if the development could not be completed.

## 6.2. Grounds of Appeal – First Party

A first-party appeal has been lodged only against condition no. 6 and condition no. 7 attached to the Planning Authority's notification of a decision to grant planning permission for the proposed development. The following grounds of appeal are raised:

Condition No. 6

- Regarding the PA's rationale for removing the block namely to improve the quality of communal open space it is set out that the quantum of communal open space of 510sqm exceeds the minimum open space required under the Apartment Guidelines 2020 and Chapter 15 of the Development Plan of 345sqm based on the proposed unit numbers and mix.
- Not seeking a derogation from private amenity space as all apartments are also provided with private amenity space requirements.
- The quality and usability of the communal open space has been demonstrated in the documentation submitted in response to the RFI request.
- Regarding improving the aspect of Block A, it is set out that the units in Block A achieve a suitable level of residential amenity including access to sunlight and daylight.

- The aspect of Block A coupled with the separation distance between Block A and B of 8-20m and the transition in scale provide an appropriate level of residential amenity.
- Block B will have an acceptable separation distance from No 1 and 2 Rydalmount coupled with layout, orientation and existing boundary treatment Block B will have an acceptable relationship with these properties to the north.
- RFI response demonstrates that the proposed walkway between Block A and Block B will to be visible from Kadiv and will be screened from Rydalmount House by existing landscaping.
- Emergency, service, and delivery access have been addressed in accordance with the requirements of table 15.1 in section 15.2 of the CDP as part of the RFI response submitted.
- The appeal includes an alternative design solution for the Board's consideration. The revised design proposal includes:
  - Revised drawings reducing Block B to 2 storeys with own door apartments over ground and first floor removing the requirements for the connecting walkway.
  - Relocating the communal amenity space to be provided within the pavilion building to the ground floor of Block A.

#### Condition No. 7

- Referencing the revisions made in response to the RFI it is set out the Block A is situated c. 27.5 – 33.9m from Kadiv and screened by existing vegetation. In addition, elevational changes to the northeastern elevation of Block A will ensure no overlooking. The set back levels as proposed are green roofs with no access on closest proximity to this boundary.
- It is considered that the relationship and transition in scale is to be expected in an Inner Suburban location such as this.
- The location and design of apartment A05.58 does not have the potential to overlook or be considered overbearing.

### 6.3. First Party Response to Third Party Appeals

The First party refer to the 'transitional arrangements' as set out in Circular Letter NRUP 07/2022 setting out that the subject site was assessed against the provisions of SPPR7 and SPPR8 of the Apartment Guidelines 2020 rather than 2022 Guidelines

and the Development Plan 2020-2028 standards.

The response addresses the grounds of appeal raised by the third-party appellants as follows:

Excessive residential density resulting in overdeveloped of the site

- Table 1 of Appendix 3 of the CDP does not include a density range for Inner Suburban area or areas located on Key Public Transport Corridors like the subject site.
- Section 4 of Appendix 3 acknowledges that greater building heights and density will be supported in 'key locations' which includes 'Public Transport Corridors'
- Net density is 260 units per ha. (as per FI response). The PA has accepted the density above the net density range of 60-120 units per hectare for Outer Suburbs locations through the notification of decision to grant.
- Density ranges in Table 1 of Appendix 3 are not seen as a cap and higher densities are acceptable at appropriate locations.
- It is submitted that the proposed density is appropriate having regard to the proximity to Milltown Luas stop and the range of bus services and other services and amenity in this Inner Suburban area.
- Transport Assessment demonstrates that the development will generate an additional 64 no. Luas passengers approx. 1.56% of total Luas capacity and an additional 17 no. bus passengers.

Inappropriate height and scale

- The proposed development has been assessed against the performance criteria included in Table 3 of Appendix 3 of the Development Plan
- Development also consistent with the development management criteria included in Section 3.2 of the Building Height Guidelines 2018 as set out in the Planning Report.
- The Architectural Design Statement and Statement in response to the FI sets out the topography of the site is unusual and there is a significant level change from Milltown Road up to the garden level. Block A has a maximum height of 19.86m and has been designed to provide a graduation in height to the adjacent

sensitive interfaces. It is set out that the development will enhance the streetscape to Milltown Road, the Dodder Valley further south and contribute to the urban character of the area.

- The TVIA accompanying the application establishes that the site lies in an area of similar land uses and is assessed as having a negligible level of effect on the character of the townscape locally and in the wider area.

#### Impact on residential amenity

- The scheme was revised at FI stage to address overlooking and overbearing of neighbouring properties in the context of section 15.8.18 of the Development Plan.
- The Sunlight, daylight and Shadow Assessment (Impact Neighbours and Development) demonstrates that the development generally complies with the BRE guidelines in relation to skylight, annual and winter sunlight and shadow (sunlight) available to neighbours.
- Regarding impacts on Kadiv it is set out that the first party appeal demonstrates that there would be little if any benefit arising from the omission of the two-bedroom apartment for Block A. Block A is situated 27.5-33.9m from Kadiv and screened by existing vegetation. Elevation revision on the northeastern elevation of Block A ensure that there is no overlooking of the front garden of Kadiv.
- There is no access to be provided to the area of green roof resulting from the removal of the apartment as a result of condition no. 7.
- Regarding Rydalmount it is set out that the living/kitchen/dining space of the units in Block B have principal windows facing south and secondary windows in the west and north elevations towards Rydalmount. The reconfigured Block B provides for an improved relationship with Nos 1 and 2 Rydalmount.
- Regarding impact on property values, it is set out that the scheme has sought to achieve a balance of respecting amenity whilst also facilitating higher density residential development at this location in accordance with national planning policy.
- Regarding aspect, it is out that there are not single aspect units north facing.

### Visual impact on the protected structure

- The TVIA submitted with the application states that the development will not impact on the Conservation Area along the River Dodder or the Protected Structure and Zone of Archaeological Interest.
- BHA2 and BHA9 referred to in the third-party appeal relates to works to a protected structure and within an ACA and therefore not applicable to the application.
- Reference is made to the conclusions of the TVIA accompanying the planning application.

### Concerns regarding proposed Build to Rent development.

- Provision of Built to Rent acceptable in accordance with Section 5.5.7 of the Development Plan and Policy QHSN40.
- The subject site is appropriately served by public transport and is located a short cycle to a number of employment locations.
- BTR justification report establishes that there is a prominence of owner-occupied houses when compared to apartments to rent. Referencing the Census (2016) it is set out that the greatest demand is for 1- and 2-persons households, therefore there is evidence base to support the smaller unit types.
- Regarding over concentration the BTR justification report demonstrated there is 1 proposed BTR for 97 units with a 1km radius of the site (re. 4115/21/ ABP 313048-21). There is a further permitted development (ABP 311302-21) outside of the 1km radius. It is further set out that based on ESRI population projections by Local Authority BTR developments equate to c. 2.5% of the estimated population within 1km.
- Amenity space for further residential is in compliance with Policy QHSN42 and SPPR 7 of the Apartment Guidelines 2020

### Impact of childcare/ Schools

- The response refers to the SCIAA accompanying the planning application.
- It is set out that the 59 units proposed is under the threshold of 75 dwellings referred to in Section 15.8.4 requiring childcare provision and under the 2001

#### Childcare Guidelines.

- It is set out the development will generate a childcare requirement of 7 places.
- Having regard to the nature of the same and the proposed demographic of the users it is considered that the existing services in the area will cater for demand generated.

#### Inappropriate removal of trees

- It is set to that two-thirds of the trees to be removed are deemed to be low quality.
- Referencing the EclA it is submitted that overtime the negative ecological impacts will reduce as new trees establish.

#### Concerns regarding construction impacts

- It is not proposed to utilise the existing laneway from construction access will be provided from Milltown Road to the south.
- Access to the laneway will be maintained for the existing residents during construction.
- Enviroguide response address construction related impacts from an environmental perspective, the application will be subject to mitigation measures outlined in the CEMP.

#### Traffic and transport issues

- It is set out that pedestrian and cycle access routes are shown of submitted drawing W036-CSC-XX-XX-DR-C-0015.
- Access to the development via the northern access is proposed for the 2 no. car parking spaces located within the northern part of the site and for deliveries and servicing. It is proposed to implement a signalised junction arrangement to ensure safe access can be accommodated for vehicles, pedestrians and cyclists in a controlled manner.
- The 6-no. shared car parking spaces required by condition no. 16 reduces the car parking demand as the shared car parking space may accommodate the equivalent trips as 14 private cars reducing the car parking demand by approx.

78 spaces. The management of the shared cars will be monitored by the Residential Travel Plan co-ordinator, Management Company and measures to include their usage will be undertaken.

- Waste collection and servicing of Block B will occur in the same manner as Block A – residents of Block B will bring their waste to the refuse storage room within Block A. Servicing will occur within the turning area situated to the north of the site.

#### Lack of public open space

- It is set out that a total of 510qm of communal open space is provided for within the scheme and each units has a private amenity balcony space.
- Due to the infill nature of the site is it is not possible to provide public open space. Table 15-4 of the Development Plan outlines that 10% public open space is required on Z1 zoned lands. Section 15.6.7 states that where it is not feasible to provide public open space or where it may be considered having regard to the existing provision in the area, it may be more appropriate to seek a financial contribution. The site is located near the River Dodder, Darty park and Windy Arbour playground, which provide sufficient open space. The applicant accepts a condition in this regard.

#### Boundary query

- A response to legal issues were provided as part of FI response included a letter from BHSMLLP Solicitors which sets out that the property benefits from a right of access over the private road abutting the property and providing access on to Milltown Road.
- The solicitors letter confirms that the title to the private roadway is unregistered.
- Regarding boundary walls/treatment i.e., a shared boundary between the properties a Rydalmount, if planning is granted the development is entitled to carry out works along the application site boundary. The works are not proposed on a common embankment area.

#### Ownership of BTR scheme

- Regarding concerns raised about completion of the scheme. This is not a

planning issue. The first party note that the applicant has extensive experience in funding and managing residential and commercial development.

#### Validity of the site notice

- It is recognised that the site is to the east of Kadiv. It is submitted that third parties were not prejudiced by the context of the public notices.

#### Flood risk

- The SFRA submitted with the application confirms that the site is located in Flood Zone C and will not result in flooding on the site or elsewhere.

#### Inadequacy of assessment

- The EIA screening report addressed the potential cumulative effects of the proposed development with other developments in section 3.7.2. Further appraisal was carried out in and summarised in section 3.7.2.1.

#### Conclusion

The proposed development is in accordance with proper planning and sustainable development and the Board should uphold the Planning Authority's decision.

### 6.3.1. **Third Party Response to First Party Submission**

#### **Response Marston Planning Consultants on behalf of John Whelan and others (24<sup>th</sup> March 2023):**

Regarding the laneway and embankment, it is set out that historically the embankment has been fenced off from the site, notwithstanding same the applicant is claimed ownership of the embankment without evidence of ownership being established. It is further set out that the new entrance at Kadiv will conflict with the proposed access.

#### Condition No. 6

- Third party concerns were not solely based on inadequate level of open space but also the proximity to no's 1 and 2 Rydalmount.
- Regarding the open space there is no basis for the first party to claim the space will be good quality. The buildings cast a shadow over the main communal area for most of the year.
- It is set out that the removal of Block B indicates the overdevelopment of the



site.

- It is clear there will be significant overlooking from Block B. The trees along the northern boundary cannot be viewed as any form of mitigation.
- Block B as presented to the Board will contain living spaces overlooking the front garden of No.1 Rydalmount.

#### Transportation

- It is set out that the first party swept path drawing (Dwg. No. C0005) does the opposite to what it was intended and clearly establishes that a fire tender cannot access the laneway.
- It is reiterated that the laneway has two blind bends on a severe slope and access to the proposed two carparking spaces can be difficult even at present with cars sometimes having to carry out reversing movements to access.

#### Revised Scheme

- There is no material difference in terms of open space quantity or quality under the revised scheme. The two units are townhouses and should include their own back gardens. Furthermore, the design is such that it overlooks the rear units within Block A.

#### Condition No. 7

- It is argued that the impact of the scale of the development in the adjoining dwellings must be carefully considered and should not be restricted to units A05.58.
- Accuracy of CGI representation when viewed from the entrance to Kadiv queried including the screening as identified having particular regard to the fact that the proposed development is ca. 10m from the boundary while the existing house is ca. 30m away.
- CGI's and landscaping do not correspond. The landscaping is over scaled in the CGI's. In addition, some existing screening will be removed. Contrary to first party argument the existing planting will not mitigate the adverse visual amenity of the development.

#### Conclusion

- The development is overdevelopment of the site and is excessive in massing and scale and will be highly incongruous in the surrounding streets and will have an overbearing impact on Kadiv and Nos 1 and 2 Rydalmount.
- The developed will result is a serious traffic hazard due to inadequate vehicular and pedestrian access.

**Response Paul Kelly, 4 Churchfields, Farenboley, Dublin 14. (22<sup>nd</sup> March 2023):**

- Based on the swept path analysis it is difficult to understand how a fire truck will be able to access the site
- The right of way is for a single dwelling and not for the proposed development.
- The revised Block B appears to have windows looking into no's 1 and 2 Rydalmount.
- The development is out of character with the demesne of Rydalmount.
- The first party claim that there are no primary windows opposite each other however the main room and bedrooms of Kadiv are facing the development.
- The function room has a seating area that looks directing at Kadiv, this does not respect the privacy of existing residents
- There is no back garden in Kadiv, and the front garden serves as the amenity for the house, if this is overlooked there will be not privacy for the residents.
- Query raised re. whether windows are proposed on the first-floor east elevation

**6.4. Planning Authority Response**

A response was received dated 3<sup>rd</sup> March 2023 requesting the Board uphold the decision of grant planning permission and sets out a number of conditions to be included.

**6.5. Observations**

The following observation has been received:

**6.5.1. Jackie Frawley, 10 Ballinteer, Dublin 16. (received 28<sup>th</sup> February 2023)**

The observation notes:

- Majority of apartments being built in Dublin are BTR.
- Most of the BTR apartment in south Dublin are charging extortionate rents.
- BTR by their nature are transient.

- Concerns over the scale of the development
- Safety issues with large number of residents accessing Milltown Road on a blind corner.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. The case involves several versions of the proposed scheme, namely, the original application, the revised design submitted as further information, the permitted scheme as per the DCC decision (i.e., including the amendments required under condition no. 6 and 7), and the amended design option submitted with the First-Party appeal. Unless otherwise stated, my assessment and any references hereafter to the 'proposed development/scheme' are based on the revised scheme submitted as further information, that being the scheme on which the DCC decision is based.
- 7.1.2. The inclusion of an 'amended design option' is not an uncommon practice in the appeal process. The main aims of the amended proposal are to reduce the overall scale/massing of the proposal and to address communal open space provision, which would normally not give rise to material considerations for third parties. Surrounding properties (Kadiv and No's 1 and 2 Rydalmount) are active parties in this case and have had the opportunity to comment on the amended proposals. Accordingly, I am satisfied that adequate opportunity has been afforded for comment on the amended design and it can be considered as part of the appeal.
- 7.1.3. 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 can be addressed as follows:
- The Principle of Development
  - BTR Tenure
  - Density and Building Height
  - Impact Architectural Heritage and Visual Amenity
  - Condition no. 6 & Condition no. 7.

- Open Space
- Residential Amenity
- Traffic and Transportation
- Other Matters

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 28<sup>th</sup> July 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 21<sup>st</sup> 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.

## 7.2. The Principle of Development

### *Zoning*

- 7.2.1. The proposal provides for the demolition of the existing domestic buildings and the construction of a Build-to-Rent (BTR) residential development, comprising 59 no. BTR apartments. The appeal site is zoned Z1 - Sustainable Residential Neighbourhoods in the Dublin City Development Plan 2022-2028 which seeks to *“protect, provide and improve residential amenities”*. The Development Plan confirms that in order to achieve a sustainable tenure mix in neighbourhoods, the Build to Rent residential typology is predominantly in the open for consideration category within the Z1 zoning.

### *Demolition*

- 7.2.2. The existing structures to be demolished comprise the residential dwelling known as 'Dunelm' and structures on site, with a total combined gross floor area of 395sqm. These buildings can largely be described as domestic consisting of a modern two storey detached family home and associated outbuildings which are of no heritage value. None of the structures are included within the RPS, an ACA, or the NIAH.

- 7.2.3. From a climate action/energy perspective, I note Development Plan provisions (including 15.7.1 and CA6) and 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.
- 7.2.4. I am satisfied that the existing buildings are not of significant scale, heritage or local character value, and I do not consider that their retention could be reasonably required as part of a comprehensive redevelopment of the site. I consider that demolition is justified in this case in light of the overarching needs to achieve higher density, compact, sustainable development on brownfield sites in accordance with the overarching aims of the National Planning Framework. Accordingly, I have no objection in principle to the demolition of the existing buildings.

#### *Conclusion*

- 7.2.5. I consider that the principle of the proposed BTR residential development, including the demolition of the existing buildings on the site, which are not of architectural merit, acceptable within this zoning category, subject to the detailed considerations below.

### **7.3. BTR Tenure**

- 7.3.1. A number of third parties and the observer have raised concerns about the BTR typology including the transient nature of residents.
- 7.3.2. 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)*.
- 7.3.3. Policy QHSN40 sets out that BTR should be concentrated in significant employment locations, within 500m of major public transport interchanges and within identified Strategic Development Regeneration Areas. Whilst I accept that these locations are not applicable in the case of the subject site the Development Plan does not establish a blanket ban on BTR outside of these area. Policy QHSN41 of the Development Plan sets out that '*...Smaller BTR accommodation schemes with less than 100 units will only be considered in exceptional circumstances and where a detailed justification is provided*'.

- 7.3.4. In accordance with Policy QHSN41 a BTR justification report and a Build to Rent Amenity Assessment Report accompanied the planning application. The justification report establishes that there is a prominence of owner-occupied houses when compared to apartments to rent in the area. Referencing the Census (2016), it is set out that the greatest demand is for 1 and 2-persons households. The report also demonstrates that due to the changing demographic trends in Dublin and the rising costs of traditional renting, there is an increasing demand for BTR accommodation as part of overall housing tenure mix. Therefore, I am satisfied that there is evidence base to support the smaller unit types at this location and the development can be justified in accordance with Policy QHSN41.
- 7.3.5. In addition, having regard to the location of the development in a built-up area c. 4.3km south of the city centre, c. 2.2km north of Dundrum within easy walking distance of Milltown Luas Stop located to the immediate north of the site and accessible to a number of bus routes, I am satisfied that the location ensures that the site is within walking/cycling distance of employment locations with wider employment locations accessible on public transport including Dublin bus.
- 7.3.6. Regarding concerns raised that the development would lead to an over concentration of BTR development in the area, the BTR justification report establishes that there is 1 proposed BTR for 97 units with a 1km radius of the site (re. 4115/21/ ABP 313048-21). There is a further permitted development (ABP 311302-21) outside of the 1km radius. It is further set out that based on ESRI population projections by Local Authority BTR developments equate to c. 2.5% of the estimated population within 1km. I am satisfied that the development will not result in an overconcentration in the area. Having regard to the existing mix of tenure in the area I consider the provision of a BTR scheme will contribute to the availability and range of residential accommodation.
- 7.3.7. The proposed development in terms of floor areas would be acceptable and in accordance with Development Plan standards Section 15.10.1 - Design Standards relating to SPPR 7 and SPPR 8 of the Sustainable Urban Development Design Standards for New Apartments requirements (2020) for "Build to Rent" developments. The minimum standards for apartments have been adhered to in the design of the scheme. I note the third parties nor DCC raised any concerns in this regard.

*Conclusion*

7.3 Section 5.1 of the Apartment Guidelines 2020 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 homeownership 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.

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.

#### 7.4. **Density and Building Height**

##### *Density*

- 7.4.1. The third parties and observer consider the density excessive, contrary to the Development Plan and over development of the site.
- 7.4.2. The proposed development provides a net density of 260 units per hectare (as per FI response). Table 1: *Density Ranges* of the Development Plan establishes a density of 60-120 (net density) unit per hectare for Outer Suburban locations.
- 7.4.3. The first party state and I would agree the Table 1 of Appendix 3 of the Development does not include a density range for Inner Suburban area or areas located on Key Public Transport Corridors like the subject site.
- 7.4.4. Section 4 of Appendix 3 sets out that there is 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 including the Luas. The Development Plan also establishes that development proposals will

primarily be determined by reference to the proximity of new public transport infrastructure and to the area character. Locations for intensification must have reasonable access to the nearest public transport stop. In line with national guidance, higher densities will be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station in the plan. As such highest densities will be promoted at key public transport interchanges or nodes.

- 7.4.5. Section 7.5 of the Traffic and Transport Assessment establishes that the development is within a 5-minute walk and a 10-minute walk of a bus stop on Milltown Road and Dundrum Road and within a 5-minute walk of Milltown Luas green line stop. I am satisfied that the site is adequately served by a public transport corridor and can therefore support high density development in line with the Development Plan policies as set out above. In addition, I consider that the site is within a 'Central and/or Accessible Urban Location' in accordance with Section 2 of the Apartment Guidelines which can sustainably support higher density apartment development based on the criteria set out in the Apartment Guidelines. I note the PA raised no concerns around the density proposed.
- 7.4.6. I am satisfied that the proposed development in this location is in accordance with the Development Plan 2022-2028 which advocates an approach of consolidation and densification in the city and the proposed density complies with Government policy to increase densities on underutilised lands within core urban areas in order to promote consolidation and compact growth, prevent further sprawl and address the challenges of climate change.
- 7.4.7. I note the third-party contention that the site is not brownfield, notwithstanding, the site is currently underutilised. I am satisfied that the density is acceptable and appropriate for the suburban location of the development. The Development Plan states that *"Appropriate densities are essential to ensure the efficient and effective use of land. It is important to make the best use of the city's limited land supply in order to meet the need for new homes, jobs and infrastructure required by the city's growing population. More compact forms of development, ensuring, the containment of 'urban sprawl' and achieving social and economic diversity and vitality are critical for the future of the city and addressing climate change"*, this is supported by Policy SC10 Urban Density and Policy SC11 Compact Growth of the CDP



7.4.8. It is a requirement under the NPF that at least half of all future housing and employment growth in Dublin be located within and close to the existing 'built up' area of the city, specifically within the canals and the M50 ring.

*Building Height*

7.4.9. The third-party appellants argue that the proposed height and scale is excessive and out of context with the surrounding area.

7.4.10. 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.

7.4.11. 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.

7.4.12. 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.

7.4.13. Section 4 of Appendix 3 establishes that there is recognised scope for height intensification within the catchment areas of major public transport corridors including the Luas. Regarding Outer City (suburbs) the Development Plan set out that outside of the canal ring, in the suburban areas of the city, in accordance with the guidelines, heights of 3 to 4 storeys will be promoted as the minimum. Greater heights will be considered on a case by case basis, having regard in particular to the prevailing site context and character, physical and social infrastructure capacity, public transport capacity and compliance with all of the performance criteria set out in Table 3 of Appendix 3.

7.4.14. Appendix 3 sets out that there are considered to be three general categories of height in the Dublin Context, of relevance to the subject site is category - Prevailing Height.

The development Plan states that this is the most commonly occurring height in any given area and *“Within such areas, there may be amplified height. This is where existing buildings within the streetscape deviate from the prevailing height context, albeit not to a significant extent, such as local pop up features. Such amplified height can provide visual interest, allow for architectural innovation and contribute to a schemes legibility”*. Therefore, there is policy support for increased height at this location.

- 7.4.15. Table 3 of Appendix 3 includes 10 objectives and performance criteria in assessing proposals for enhanced height, density and scale. I have reviewed the scheme relative to Table 3 and I am satisfied that the urban scale and building height proposed reflects a high standard of urban design, architectural quality and placemaking principles and the site has the capacity to accommodate increased building height in line with the provisions of the Development Plan.
- 7.4.16. The applicant has prepared a variety of drawings, studies and photomontage images to illustrate the development and its surroundings. The TVIA (Townscape and Visual Impact Assessment) submitted states that the proposed development is in keeping with the scale of existing developments along this stretch of the Milltown Road and in keeping with the scale of the adjacent Nine Arches viaduct and Shanagarry chimney and seeks to reinforce the urban scale of these elements strengthening the urban character of the surrounding area.
- 7.4.17. The proposed building heights of the residential buildings range from 4 storeys (Block B) to 6 storeys over basement and lower ground floor (Block A). At its highest point Block A is 22.98m and will reflect eight floors when viewed from Milltown road owing to the topography of the site. The height of Block A is measured across three parts allowing the mass of the building to be broken-up. The building block is tiered from level four with a further tier on level five along the eastern facing elevation to address the existing fabric of the surrounding environment and transition the height from east to west along the sensitive interfaces with the adjoining properties to the east and north.
- 7.4.18. I do not consider that the development will present a new form and height of development for this area, it is the applicant’s contention, and I would agree that on an urban scale the building responds to the grain of existing development and the

specific nature of its location next to the Luas. In this regard, I note the prevailing building height in the immediate vicinity of the site is mixed ranging from two-three storey (over basement in some cases) residential properties immediate to the site, the Shanagarry apartment complex located to the southeast of the site extends to a building height of 6 storeys, similarly the Richmond Court apartment complex to the immediate west is four storeys. I am satisfied that the development adheres to the prevailing building heights and is in accordance with Appendix 3 of the Development Plan.

#### *Conclusion*

7.4.19. The issues of density, height, scale and massing of the proposal are inter related. It is the sum of all these parts that, amongst other assessments, determines the appropriateness or otherwise of the proposal. Having regard to the considerations above, I consider that the proposal in principle for a six-storey building (over basement and lower ground floor) at this location is acceptable and in accordance with Objective CS07 of the Development Plan to *Promote Delivery of Residential Development and Compact Growth* and 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.

#### **7.5. Impact Architectural Heritage and Visual Amenity**

7.5.1. The third parties and observer all raise concerns about the visual impact of the development and the impact on the Nine Arches Viaduct, Protected Structure (RPS ref. 886) located to the immediate west of the site and Protected Structure (RPS 5254) Laundry Stack located to the south on the opposite side of Milltown Road. It is also argued that the photomontages do not fully illustrate the impact on the protected structures.

7.5.2. The first party contend that the development will enhance the streetscape to Milltown Road, the Dodder Valley further south and contribute to the urban character of the area. The TVIA accompanying the application establishes that the site lies in an area of similar land uses and is assessed as having a negligible level of effect on the character of the townscape locally and in the wider area.

- 7.5.3. As regards visual impact, Block A will be clearly visible from Milltown Road, the topography of the site is unusual and there is a significant level change from Milltown Road up to the garden level. Block A occupies most of the southern site boundary fronting Milltown Road. The architectural design resolution reflects a contemporary modern design, Block A does not run parallel to the Milltown Road but runs along a southwest northeast axis in line with the access road fronting the site to the southeast and is recessed from Milltown Road. The Architectural Design Statement argues that the development will deliver additional scale and enclosure to Milltown Road and that Block A has been designed to provide a graduation in height with adjoining residential properties to the north, northeast and east. I would agree and consider the bulk and scale of Block A is reduced when viewed from Milltown Road by virtue of the building alignment and set back from Milltown Road and recessed upper level.
- 7.5.4. The issue of visual impact includes the visual impact on the Protected Structures in the vicinity of the site. In this regard, I accept that the development will present a new form and height relative to the immediate streetscape of Milltown Road and adjacent to the Nine Arches viaduct. However, as I have already stated I am cognisant that there are four storey and six storey apartment buildings in the vicinity of the site. The Conservation Assessment accompanying the planning application concluded that the extent of the visual change would not represent a detrimental negative visual impact. I would agree. The city skyline is evolving, and the Development Plan notes that although low rise in nature, certain areas of the city have the capacity to accommodate buildings of greater height. Updated CGIs were submitted at FI stage outlining that the development will be screened by a mixture of established vegetation and proposed semi-mature planting, and this will mitigate any adverse local visual impacts.
- 7.5.5. Furthermore, Protected Structures Policy SC22 of the Dublin City Development Plan 2022-2028 seeks 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*”. Having regard to the dominant scale of the Nine Arches viaduct and the Chimney stack, I am satisfied that the proposed development will not detract from either structure. In fact, the viaduct screens the site from the western approach and creates a backdrop of scale and height along the eastern approach allowing the structure to site more comfortably into the streetscape in terms of scale and height. The clear distinction between design, scale form and finishes ensure that

the proposed development is distinctive and clearly legible from the Protected Structures. Furthermore, the Chimney Stack is a standalone structure located on the opposite side of the road, the character and setting of which will not be altered by the proposed development.

#### *Conclusion*

7.5.6. I consider in relation to the visual impact and impact on the streetscape and built heritage, the proposal is of a high standard and is innovative and contemporary and I am satisfied that the development in accordance with Policy SC22 and will not detract from the character and setting of the Protected Structures or represent a negative visual intrusion the area.

#### **7.6. Condition No. 6 & Condition No. 7**

##### *Condition No 6.*

7.6.1. Condition no. 6 of the DCC notification stipulated that *“Prior to the commencement of development the applicant shall submit revised plans for the written agreement of the Planning Authority omitting Block B from the scheme in its entirety along with the connecting walkway and a revised landscaping scheme which incorporates these lands into their communal open space allowing for a single 100sq.m designed play area with the relevant play equipment and seating. Reason: In the interest of the residential and visual amenity of the development and the wider area”*.

7.6.2. In response the first party submitted revised proposal for the Board’s consideration to reduce Block B to 2 storeys with own door apartments over ground and first floor removing the requirements for the connecting walkway and relocating the communal amenity space which was proposed in a standalone pavilion building to the ground floor of Block A.

7.6.3. It is the contention of the third parties that the condition to remove Block B is a further reflection of the overdevelopment of the site. In addition, it is argued that the revised Block B submitted in response to the appeal by the first party does not constitute apartments but 2 no. townhouses nor does it address appropriate qualitative communal open space.

7.6.4. In my opinion, the footprint of Block B has not altered significantly from the original proposal although it is off set from the vista of and from No. 1 and 2 Rydalmount and

only two storeys in height the Block appears out of place in the context of the development, severs the site and reduces placemaking qualities. It would appear Block B was designed to increase the number of units on the site; however, this can only be considered appropriate where there is no detrimental impact on the overall design and layout of the development proposal.

- 7.6.5. To this end and noting the concerns raised about overdevelopment, I note the plot ratio at 2.3 is towards the top end of the indicative standards as set out in Table 2 *Indicative Plot Ratio and Site Coverage* of the Development Plan which establishes an indicative plot ratio of 1.0-2.5 for residential areas. The plot ratio of 2.3 would reflect intensive land use. In my view, Block B represents overdevelopment of the site.
- 7.6.6. Furthermore, I agree with the third parties that the revised Block B reflects two no. townhouses and not an apartment building. The Apartments Guidelines define an 'apartment' as 'a self-contained residential unit in a multi-unit building with grouped or common access'. I am satisfied that the revised Block B accommodating two no. units with own door access does not fit into this definition. Therefore, the proposed development should not be assessed against standards required for new apartment developments. Accordingly, the proposed development is most suitably assessed with regard to policy QHSN37 *Houses and Apartments* of the Dublin City Development Plan 2022-2028 referring to urban housing and compliance with relevant standards for residential accommodation for urban housing that are referenced in Chapter 15 of the Development Plan including minimum private open space requirements. This has not been provided for within the revised proposal and to do so with significantly reduce the communal area proposed and owing to the unusual shape of the site would be challenging to provide without having a significant and detrimental impact on the design and layout of the scheme.
- 7.6.7. I consider the addition of Block B in any form to the rear of the site constitutes overdevelopment of the site and in the context of appropriate design and layout, I agree with the Planning Authority that Block B should be omitted from the scheme.

*Condition No. 7*

- 7.6.8. As regards the first party appeal re. condition no. 7, condition no. 7 of the DCC notification required the omission of unit A5.58 from the top floor in order to reduce the overscale of the development. The removal of unit A5.58 will not reduce the overall

height of the development as units A5.59 and the residential amenity floor space will remain. In my opinion, the removal of A5.58 does little to reduce any perceived overscale, in any case I am satisfied that unit A5.58 is acceptable owing to the tiered design approach and the materials proposed which reflect selected brick and render at lower levels grounding the block and a curtain wall cladding system on the top floor with elements of curtain wall clear glass fronting the Block facing Milltown Road. I am satisfied that unit A5.58 should be retained.

- 7.6.9. For clarity and having regard to third party concerns, If the Board consider it appropriate to remove unit A5.58, the first party have stated that no access is to be provided to the area of roof resulting from the removal of the apartment as a result of condition no. 7. The additional roof area will form an extension of the green roofing system.

*Conclusion*

- 7.6.10. Having regard to the design and layout of the scheme I consider Block B represent overdevelopment of the site and should be removed from the scheme. Having regard to the tiered design and selected material on the fifth floor, I am satisfied that unit A5.58 is acceptable on this basis.

**7.7. Open Space**

*Communal Open Space*

- 7.7.1. The PA's rationale for removing Block B included to improve the quality of communal open space. The first party argue that the quantum of communal open space of 510sqm exceeds the minimum open space required under the Apartment Guidelines 2020 and Chapter 15 of the Development Plan of 345sqm based on the proposed unit numbers and mix. It is further stated that Block B will have an acceptable separation distance from No. 1 and 2 Rydalmount and coupled with layout, orientation and existing boundary treatment Block B will have an acceptable relationship with these properties to the north.
- 7.7.2. The third parties argue that there is no basis for the first party to claim the communal open space will be good quality.
- 7.7.3. Section 5.5.7 of the Development Plan states that the concept of Build to Rent requires a critical mass of accommodation to provide a meaningful provision of communal

facilities and services. Section 15.4 of the Development Plan sets out key principles to support high quality design including healthy placemaking. Section 15.6.12 *Public Open Space and Recreation* establishes that the design and layout of the open space should complement the layout of the surrounding built environment and complement the site layout, should be overlooked and designed to ensure passive surveillance is achieved and should be visible from and accessible to the maximum number of users, inaccessible or narrow unusable spaces will not be accepted.

7.7.4. Whilst I accept that the requisite quantum of open space has been identified, the defined area includes circulation areas which are not useable amenity areas and therefore cannot be considered in terms of quantum. Overall, in terms of useability and associated contribution to quality placemaking, I do not consider the communal space successful in terms of scale and shape, the tight grain will provide for limited uses not conducive to a quality living environment. In addition, I do not consider concerns raised in section 7.6 as regard revised Block B cannot be overcome by way of condition.

7.7.5. In conclusion, I do not consider the layout provides for a 'meaningful communal' open space in accordance with section 5.5.7 and Section 15.6.2 of the Development Plan. I consider the omission of Block B and the resultant increase in provision of communal open space would significantly enhance the quality of the communal open space within the development for the benefit of all future residents.

#### *Sunlight to Open Space*

7.7.6. The third parties raised concerns that the scale of the development results in the amenity space being overshadowed for most of the year. The BRE document indicates that for an amenity area to have good quality sunlight throughout the year, 50% should receive in excess of 2 hours sunlight on the 21st of March. The guidelines states that the 21 March should be used for the assessment and that "Sunlight at an altitude of 10° or less does not count, because it is likely to be blocked by low level planting." The communal amenity spaces were assessed for the amount of direct sunlight received on the 21st of March, both the shared amenity space at ground floor level and the roof level (5<sup>th</sup> floor) equated to 72% and 99% respectively meaning the greater than 50% of the area receives 2 hours of sunlight on 21<sup>st</sup> March. The proposed development meets the recommendations of the BRE guidelines.



7.7.7 The analysis determined that there is no significant impact on private amenity space to neighbouring properties. 100% of tested neighbouring spaces pass the BRE 2-hours of sunlight on 21<sup>st</sup> March or 0.8 ratio requirements.

7.7.8. While it is acknowledged that the proposed development would be visible from adjacent properties. Having regard to the information submitted, which is robust, and evidence based, it is my view that it would not result in any undue overshadowing of the adjacent properties. It is also noted that the PA raised no concerns regarding any potential overshadowing of adjacent properties.

#### *Public Open Space*

7.7.9. The third parties contend that the development is contrary to Section 15.10.2 Communal and Public Open Space of the Development Plan which states that "*All Built to Rent developments will be required to provide for the same quantum of external communal open space and public open space as set out for standard apartment developments*" as regards public open space provision.

7.7.10. Regarding Public Open Space provision, table 15.4 of the Development Plan outlines that 10% public open space is required on Z1 zoned lands. Due to the infill nature of the site it is not possible or provide public open space. Section 15.8.7 states that where it is not feasible to provide public open space or where it may be considered having regard to the existing provision in the area, it may be more appropriate to seek a financial contribution.

7.7.11. The site is well serviced by public amenity spaces including the Dodder River Park, Darty Park, Shanagarry Park and Windy Arbour Playground to the south of the site. I note the PA are agreeable to accepting a contribution in lieu of same in accordance with section 15.8.7 of the Development Plan and the provisions of Dublin City Development Contribution Scheme having regard to the proximity of the site to the above. I further note the applicant is agreeable to same. I am satisfied that this is acceptable in this instance having regard to the scale of the development, the location relative to adjoining public amenity spaces and the provisions of the Development Plan.

#### *Tree Removal*

7.7.12. A number of concerns were raised about the removal of trees on site. A Tree Survey

and Arboriculture Impact Assessment were carried which concluded that that two-thirds of the trees to be removed are deemed to be low quality. A total of 28 no. trees were surveyed across the site. The proposal will result in the removal of 7 no. moderate quality/value B trees and 13 no. low quality /value category C trees. There are a number of key trees to be retained including Lime and Elm trees along the front of the site adjacent to the viaduct and Yew and Cypress trees to the rear boundary. In addition, 22 no. new trees will be planted ensuing no net loss of tree cover.

7.7.13. I accept that the loss of mature trees is regrettable, but I am satisfied that the loss of trees is balanced against the benefits of developing an underlisted site in an urban area at a time of unprecedented housing crisis. And whilst it may take time, I agree with the contents of the EclA that overtime the negative ecological impacts will reduce as new trees establish.

#### *Conclusion*

7.7.14. Overall, as regards the communal open space proposed my concerns relate primarily to the qualitative provision, the primary determining factor. In this regard, the omission of Block B from the scheme will provide for increased open space potential, the qualitative provision of the communal open space will be enhanced by the additional area which in turn will provide a more useable, social and inclusive space for future residents. The omission of Block B will also enhance sunlight daylight provision across the space.

The site benefits from proximity to the River Dodder and Shanagarry Park to the immediate south of the site. Additionally, there are several useable green spaces near the site including the Windy Arbour playground and Dartry Park.

It is also noted that the submitted Daylight and Sunlight Assessment indicates that all areas of communal open space would be well lit, and the Wind Microclimate Assessment indicates that the spaces would have conditions suitable for their intended activity.

#### **7.8. Residential Amenity**

7.8.1. Concerns were raised in the third-party submissions regarding the negative impact on the residential amenity of Nos 1 and 2 Rydalmount and Kadiv located to the north and east of the site respectively by reason of overlooking and overbearing impact and

( depriving the existing residents of privacy.

7.8.2. The first party contend that the updated CGIs submitted as part of the FI response demonstrate that there will be no significant overlooking or overbearing impact to the adjacent residential properties as a result of the proposed development. It is set out that along with existing vegetation screening and proposed semi-mature planting will mitigate the impacts.

7.8.3. I refer the Board to the CGI's submitted. CGI 1 represents view from 1 and 2 Rydalmount and CGI 3 represents view from Kadiv. Concerns raised about the accuracy of the landscaping screening as represented are noted. However, I would note that the images are represented of the embedded and developed scheme taking all landscaping in to consideration and with the benefit to time. These are indicative relative to the proposed landscaping scheme. I am satisfied that they are acceptable.

*Kadiv*

7.8.4. Block A is positioned c. 27.5m - 33.9m from Kadiv to the northeast of the site. Following the request for further information the first party revised the design to omit a prominent volume on the fifth-floor northeastern end and revised the design of the northeastern gable to included specifically designed light weight metal screens externally in front of secondary kitchen/dining windows limiting view outwards from the interiors but allowing light to penetrate on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Floors. In addition, the bedrooms windows on the northeastern gable facing Kadiv have projecting bay windows with a solid panel in the northeastern façade and full height clear glazing perpendicular to the façade. Also, the primary living space windows face northwest and southwest from Kadiv. These measuring combined with the separation distance in my opinion adequately address overlooking of Kadiv form the site. A degree of overlooking is acceptable in an urban area such as the site.

7.8.5. As regards overbearing impact, considering the separation distance and tired design approach, I do not consider there to be any overbearing impact. The fact that the font garden of Kadiv is the only amenity space the site has is not something the first party can control.

*No 1 and No 2 Rydalmount*

7.8.6. Block B is located c. 20 form the front facade of no. 1 and 2 Rydalmount and c. 6.4m

form the shared boundary. Block B is also off set from the line of vision of no. 1 and no. 2 Rydalmount. As regards the revised proposal submitted for the Boards consideration, the revised Block B is for a two-storey block only with a mansard roof providing no first-floor windows facing no. 1 and 2 Rydalmount, all first-floor windows address the internal communal open space, eliminating any potential overlooking and overbearing impact. The omission of Block B from the development proposal will eliminate any concerns as regards the above, should the Board be minded to do so.

7.8.7. Similarly, Block A is further set back c. 30m from no. 1 and 2 Rydalmount. No 1 and no 2 will not look directly at Block A as the Block is positioned at an angle aligned on a southwest-northeast axis and not directly south like no. 1 and 2 Rydalmount which in my opinion, will reduce the scale of the Block when viewed from no. 1 and 2 Rydalmount. Therefore, having regard to the separation distances and Block orientation I am satisfied that there will be no direct overlooking of no. 1 and 2 Rydalmount.

7.8.8. In addition, the retention of the Yew and Cypress trees to the rear boundary will negate any perceived overlooking or overbearing impact and reduce the visual impact of the development when viewed from no. 1 and no 2 Rydalmount.

#### *Conclusion*

7.8.9. The proposed development would have sufficient separation distances to existing residences; therefore, the potential for overlooking is minimal due to ample distances to neighbouring buildings to the northeast and east. The site also benefits from the retention of mature trees screening.

### **7.9. Traffic and Transportation**

#### *Ownership of Lane way/Boundary*

7.9.1. A significant issue raised by third parties relates to ownership of the lane to the east and the right to access the development via this shared laneway. In addition, some concerns were raised about the defined boundaries of the site. In this regard, I note the documentation file re. right of way. However, 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.

*Traffic Safety and Car Parking*

- 7.9.2. The third-party appeals raise concerns in respect of increased traffic at Rydalmount and that additional traffic generated will be a hazard for pedestrians, cyclists and other road users. It is argued that no meaningful justification has been provided for the lack of car parking and the lack of car parking provided will give rise to overflow car parking in the surrounding area with the potential to result in a traffic hazard and impeded access to surrounding properties.
- 7.9.3. Appendix 5 Transport and Mobility: Technical Requirements of the Development Plan establishes that the site is located in Parking Zone 2. Appendix 5 Table 2: *Maximum Car Parking Standards for Various Land Uses* establishes a requirement of 1 car parking space per dwellings in Zone 2 for Houses/Apartment/Duplexes. Therefore for 59 no. units there is a requirement for 59 no. car parking spaces (reduced to 54 by conditions no. 6 & 7).
- 7.9.4. Section 4.0 goes on to state that a relaxation of maximum car parking standards will be considered in Zone 1 and Zone 2 for any site located within a highly accessible location. Applicants must set out a clear case satisfactorily demonstrating a reduction of parking need for the development based on the following number of criteria including:
- Locational suitability and advantages of the site.
  - Proximity to High Frequency Public Transport services (10 minutes' walk).
  - Walking and cycling accessibility/permeability and any improvement to same.
  - The range of services and sources of employment available within walking distance of the development.
  - Availability of shared mobility.
  - Impact on the amenities of surrounding properties or areas including overspill parking.
  - Impact on traffic safety including obstruction of other road users.
  - Robustness of Mobility Management Plan to support the development.
- 7.9.5. The basement level (Block A) contains 10 no. car parking spaces, 1 no. motorcycle spaces, 6 no. e-scooter spaces, 98 no. cycle spaces (including 2 no. cargo spaces).

A further two car parking spaces are proposed to the north of the site.

- 7.9.6. The Residential Travel plan submitted with the application set outs that the allocation of shared car parking spaces will reduce car parking demand on site as the shared car parking space may accommodate the equivalent trips as 14 private cars reducing the car parking demand by approx. 78 spaces. The management of the shared cars will be monitored by the Residential Travel Plan co-ordinator, Management Company and measures to include their usage will be undertaken. I consider this approach satisfactory in the context of the site location relative to public transport provision and the promotion of sustainable transport modes and in accordance with Section 4.0 of Appendix 5 of the Development Plan. In any case have regard to the proximity to public transport provision, I do not consider the development will generate significant traffic. The PA raised no concerns in this regard and condition no. 16 of the DCC notification relates to the allocation of six no. shared car parking spaces to car share. I am satisfied that adequate car parking has been provided.
- 7.9.7. Regarding concerns raised about pedestrians and cyclist, a public footpath and cycle path front the site along Milltown Road connecting the site directly with Milltown Luas Stop and adjacent Bus Stops (Route no. 44 and Route no. 66 within a 5-minute walking distance from the site) and wider local services and amenities. A pinch point has been identified at the existing abutment of the Nine Arches Bridge; however, this is over a short distance only. Pedestrian and cycle access to the site is proposed via the primary development access to the south of the site and not via the lane to the east and north. Access to the development via the lane to the northern part of the site is for two no. car parking spaces and for occasional deliveries and servicing only. Of relevance the site is currently accessed via this laneway, the additional car traffic generated will reflect that currently utilising the lane and therefore acceptable.
- 7.9.8. Regarding concerns raised about the site location on a blind bend, it is proposed to implement a signalised junction arrangement to ensure safe access can be accommodate for vehicles, pedestrians and cyclists travelling to and from the development in a controlled manner.
- 7.9.9. Accordingly, I am satisfied that sufficient car parking has been provided on the site having particular regard to the location relative to public transport and the provisions of the Development Plan and the Apartment Guidelines 2020 which provide for

reduced car parking for BTR development in central and accessible locations. I am further satisfied that the proposed signalised junction arrangement will ensure no traffic conflicts arise as a result of the development.

- 7.9.10. The site is also well served and benefits from the wider pedestrian and cycle facilities which are established at front the site on Milltown Road. I have no concerns in this regard.

*Swept Path /Fire Safety*

- 7.9.11. Third parties contend that the swept path analysis of the laneway is not accurate. Concerns were also raised that there is no consideration of waste services for Block B. A Servicing and Delivery Access strategy has been submitted, I note waste collection and servicing of Block B will occur in the same manner as Block A – residents of Block B will bring their waste to the refuse storage room within Block A accessed from Milltown Road. Deliveries and other servicing of Block B will occur within the turning area situated to the north of the site.

- 7.9.12. Regarding concerns raised about access to the north of the site by large vehicles, in particular, fire access and access for servicing, I note the first party has submitted a swept path analysis Dwg. No. W036-CSC-XX-XX-SK-C-005 in response to the third-party appeals demonstrating how larger vehicles (fire truck) can access the northern portion of the site. I recognise the drawing highlights the difficulty accessing the site due the narrow width of the laneway and tight turns; however, the drawing does demonstrate that access can be obtained within the constraints of the existing laneway. I am satisfied that this acceptable and would not be unusual in an urban area. In any case should the Board be minded to omitting Block B from the development in accordance with the recommendation of this report, there would be limited need for large vehicles to access the northern portion of the site via the lane.

- 7.9.13. The development site will also be subject to a separate and independent fire safety certificate.

*Public Transport Capacity*

- 7.9.14. Concerns have been raised in the third-party submission about the capacity of public transport and the fact that the first party did not take into consideration other proposed

development in the area. Reference is also made that fact that the Transport Assessment is based on 2021 figures when many Covid restrictions remained in place.

- 7.9.15. Section 7.5 of the Traffic and Transport Assessment sets out public transport provision in the area including the Luas and Bus Services. Section 8.0 address the development impact on public transport. The first party states that the revised development will generate an additional 64 no. Luas passengers equating to approx. 1.56% of total Luas capacity and an additional 17 no. bus passengers. Notwithstanding, any potential future demand generated by other developments, I do not consider these numbers to be so significant as to have a detrimental impact on the carrying capacity of the Luas or Dublin bus services in the area. I am satisfied adequate public transport capacity is available to accommodate the development.

#### *Construction Traffic*

- 7.9.16. A number of concerns have been raised about impact of construction traffic on the existing residents using the lane. A Construction Management Plan (CMP) has been prepared. It is not proposed to utilise the existing laneway for construction vehicles, access will be provided from Milltown Road to the south. Access to the existing laneway will be maintained for the existing residents at all times. The Construction Environmental Management Plan sets out mitigation measures to be implemented to address dust and other pollutants. Subject to the implementation of these measures. I have no concerns in this regard.

#### *Conclusion*

- 7.9.17. On balance, the proposed development is located at a well-served urban location close to a variety of amenities and facilities. The site is within walking distance of high frequency transport Luas and Dublin Bus services. The Development Plan contains policies and objectives which promote measures that have the potential to reduce the climate impact of transport by encouraging a shift from private motorised transport to walking, cycling and public transport. There are good cycle and pedestrian facilities in the area and the proposed development will add improvements to the public realm in this respect. It is inevitable that traffic in all forms will increase as more housing comes on stream. However, I am satisfied that the components are in place to encourage existing and future residents to increase modal shift away from car use to more



sustainable modes of transport and this can be achieved by the implementation of the mobility management plan and car parking strategy submitted by the applicant.

#### 7.10. Other Matters

##### *Flooding*

7.10.1. Concerns were raised in one third party appeal that the increase in surface water runoff as a result of the development could have the potential to cause flash flooding downstream and that condition no. 20 of the DCC notification is not sufficient to address these concerns. Condition no. 20 relates to drainage requirements and stipulates the implementation of SUD's measures are regards surface water drainage. These measures are standard practice and consistent with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0. Condition no. 20 (ii) requested that the flood risks form the 30 year, and 100-year storms are addressed. These were carried out under the submitted SFRA and the first party have indicated that these will be updated to reflect the final permitted scheme.

7.10.2. I note also that the SFRA submitted with the application confirms that the site is located in Flood Zone C and will not result in flooding on the site or elsewhere in the vicinity.

##### *Impact of childcare/ Schools*

7.10.3. Concerns were raised in one third party appeal that there is no creche or school availability in the area and that residents will have to rely on buses if the Luas does not service their needs.

7.10.4. I refer the Board to the SCIAA accompanying the planning application demonstrating that there is sufficient social and community infrastructure within 1km of the site to cater for the development, including 7 no. primary and 5 post-primary schools within close proximity.

7.10.5. Regarding childcare demand it is set out that the development will generate a childcare requirement of 7 places only. Furthermore, the 59 units proposed is under the threshold of 75 dwellings referred to in Section 15.8.4 of the Development Plan requiring childcare provision and under the 2001 Childcare Guidelines. Having regard to the nature of the same and the proposed demographic of the users I am satisfied it that the existing services in the area will cater for demand generated.

##### *Property Value*

- 7.10.6. One third party appeal raised concerns about the negative impact on property value. In this regard, I am satisfied that the scheme has sought to achieve a balance of respecting amenity whilst also facilitating higher density residential development at this location in accordance with national planning policy.

#### *Validity of the Site Notice*

- 7.10.7. Concerns were raised in one appeal the site notice and other documents referred to the site as east of Kadiv whereas it is located to the west of Kadiv. The first party to not dispute this but submit that the interested third parties were not prejudiced by the content of the public notices, I would agree, and the drawings accompany the application clearly establish Kadiv to the west of the subject site.

### 8.0 **Environmental Impact Assessment Screening**

- 8.1.1. One third party submission raised concern regarding the correctness and robustness of the screening of the need for an Environmental Impact Assessment Report having regard to the EIA Directives.

- 8.1.2. The application addresses the issue of EIA within an EIA Screening Report that contains information to be provided in line with Schedule 7A of the Planning Regulations. I have had regard to same in this screening assessment. The EIA Screening Report identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

- 8.1.3. This proposed development is of a class of development included in Schedule 5 to the Planning Regulations. Schedule 5 to Part 2 of the Planning Regulations provides that mandatory EIA is required for the following classes of development:

- Class 10(b)(i) construction of more than 500 dwelling units,
- Class 10(b)(iv) urban development, which would involve an area greater than 2 ha in the case of a business district\*, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

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

Class 14 of Part 2 to Schedule 5 of the Planning Regulations provides that mandatory EIA is required for:

- works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

8.1.4. The development would provide for the demolition of the existing two storey 260sqm domestic dwelling known as 'Dunelm' and a 35sqm domestic outbuilding on the site, the construction of 59 (reduced to 59 in response to RFI) apartments, ancillary resident support and amenity facilities for the BTR residential units, and associated infrastructural works, including basement structures, all on a gross site area measuring 0.3147ha (including 0.088ha. of DCC lands) in a non-business district in a built-up urban area. Having regard to classes 10(b)(i) and 10(b)(iv) of Schedule 5 to Part 2 of the Planning Regulations, the proposed development is subthreshold in terms of the mandatory submission of an EIA. The nature and the size of the proposed development is below the applicable class 10(b) thresholds for EIA. Further consideration with respect to 'class 14' demolition works is undertaken below.

8.1.5. The criteria within Schedule 7 to the Planning Regulations are relevant in considering whether this proposed development would be likely to have significant effects on the environment that could and should be the subject of EIA. The residential use proposed would be similar to the surrounding land uses in the area, particularly the apartment developments to the west and south. The proposed development would not increase the risk of flooding and it would not give rise to significant use of natural resources, the production of waste, pollution, nuisance or a risk of accidents. The development would be served by municipal foul wastewater drainage and water supplies. There are two Protected Structures in the vicinity of the site, the Conservation Assessment accompanying the application determined no significant detrimental impact on the Protected Structures as a result of the development. The site does not support substantive habitats or species of conservation significance, as highlighted in the Ecological Impact Assessment submitted with the application. In total three species of bat were detected, Common Pipistrelle, Soprano Pipistrelle and Leisler's Bat. A low to moderate level of bat activity was recorded and no bat emergence was detected or observed on site. There was no evidence of Badger recorded during field surveys. Connectivity of the site with protected areas and their associated qualifying interest species is considered further below in section 9 of this report. The southern part of the site is partially within the zone of archaeologically potential associated with a millrace

that ruins into Darty Due Works (DU022-096) with archaeological assessment and comments from the Archaeology, Conservation and Heritage (Archaeology Officer) section of the Planning Authority recommending various measures to preserve or preserve by record archaeological material likely to be damaged or destroyed during the course of the proposed development. The nature and the size of the proposed development alongside this existing development remains below the applicable class 10(b) thresholds for EIA.

- 8.1.6. The reports submitted with the application address a variety of environmental issues and the environmental impacts of the proposed development. The reports demonstrate that, subject to the various recommended construction and design-related mitigation measures, the proposed development would not have a significant impact on the environment. I have had regard to the characteristics of the site, the location of the proposed development, and the type and characteristics of the potential impacts. Having regard to the Schedule 7A information, I have examined the sub-criteria and all submissions, and I have considered all information that accompanied the application and appeal. In addition, noting the requirements of Article 103(1A)(a) of the Planning Regulations, the first party has provided a statement indicating how the available results of other relevant assessments have been taken into account on the effects of the project on the environment carried out pursuant to European Union legislation other than the EIA Directive.
- 8.1.7. Under the relevant themed headings, the EIA screening information prepared by the first-party appellant addresses the implications and interactions of the proposed development and concludes that the development would not be likely to have significant effects on the environment. I am satisfied that all other relevant assessments have been identified for the purposes of screening for EIA. I have had regard to all of the reports detailed above and I have taken them into account in this assessment, together with the Strategic Environmental Assessment of the Development Plan. I am satisfied that the information required under Article 103(1A)(a) of the Planning Regulations has been submitted.
- 8.1.8. I have completed an EIA screening assessment of the proposed development with respect to all relevant considerations, as set out in Appendix A to this report. I am satisfied that the location of the project and the environmental sensitivity of the geographical area would not justify a conclusion that the proposed development would

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

## 9.0 AA Screening

### *Information Submitted*

9.1. The applicant has submitted an Appropriate Assessment Screening Report as part of the planning application. 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.

9.1.1. 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.

### *European Sites*

9.2. A summary of European Sites that occur within a 15km radius of the proposed development are set out in Table 1 and Figure 4 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 Dodder is located 42m south of the site. The nearest Natura 2000 site is South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA at a distance of c. 3.2km, North

Bull Island SPA and North Dublin Bay SAC are at a distance of 7.3km. There are several other Natura 2000 sites within the wider Dublin Bay area.

- 9.3. Table 1 of the applicant's screening report assesses the potential Source-Path-Receptor pathways with the proposed development for each site taking account of the conservation objectives and qualifying interests.
- 9.4. There is a weak indirect hydrological connection between the proposed development and habitats and species of European sites in Dublin Bay is identified during both construction and operational phases via (i) potential surface water discharges to the Dodder, which flows to the Liffey Estuary and discharges to Dublin Bay; (ii) ground water flows to the Dodder downgradient of the site (iii) the combined foul water system which passes through Ringsend WWTP and discharges to Dublin Bay. 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.
- 9.5. 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.
- 9.6. 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.

- 9.7. 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*

- 9.8. 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
South Dublin Bay SAC (000210)	c. 3.2 km from the site.	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.7.3 km from the site.	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 ( <i>Glauco-Puccinellietalia maritimi</i> ) [1330] / Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410] / Embryonic shifting dunes [2110] / Shifting dunes along the shoreline with <i>Ammophila</i>

			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. 3.2 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] / Sanderling (Calidris alba) [A144] / Dunlin (Calidris alpina) [A149] / Bar-tailed Godwit (Limosa lapponica) [A157] / Redshank (Tringa totanus) [A162] / Black-headed Gull (Chroicocephalus ridibundus) [A179] / Roseate Tern (Sterna dougallii) [A192] / Common Tern (Sterna hirundo) [A193] / Arctic Tern (Sterna paradisaea) [A194] / Wetland and Waterbirds [A999]
North Bull Island SPA (004006)	c. 7.3 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] / Shelduck (Tadorna tadorna) [A048] / Teal (Anas crecca) [A052] / Pintail (Anas acuta) [A054] / Shoveler (Anas clypeata) [A056] / Oystercatcher (Haematopus



			ostralegus) [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] / Par-tailed Godwit ( <i>Limosa lapponica</i> ) [A157] / Curlew ( <i>Numenius arquata</i> ) [A160] / Redshank ( <i>Tringa totanus</i> ) [A162] / Turnstone ( <i>Arenaria interpres</i> ) [A169] / Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179] / Wetland and Waterbirds [A999].
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*Consideration of Impacts*

- 9.8.1. It is considered that there is nothing unique or particularly challenging about the proposed urban development, either at construction or operational phase.
- 9.8.2. During the construction phase the site will be served by the existing surface water sewer on Milltown Road and a combined sewer along the Luas line to the west. Standard pollution control measures would be put in place. These measures are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites. In the event that the pollution control and surface water treatment measures were not implemented or fail, I am satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in Dublin Bay from surface water run-off can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the application site from Natura 2000 sites in Dublin Bay (dilution factor).

- 9.8.3. The scheme includes attenuation measures which would have a positive impact on drainage from the subject site. SUDS are standard measures which are included in all projects and are not included to reduce or avoid any effect on a designated site. The inclusion of SUDS is considered to be in accordance with the Greater Dublin Strategic Drainage Study (GSDSDS) and are not mitigation measures in the context of Appropriate Assessment. I also note the development is located on serviced lands in an urban area. Whilst not factored mitigation measures, I note SuDs measures on site will be an enhance quantity and quality of surface water run-off.
- 9.8.4. There is a pathway to the European site is Dublin Bay via the public combined sewer. The foul discharge from the proposed development would drain, via the public sewer to the Ringsend WWTP for treatment and ultimately discharge to Dublin Bay. There is potential for an interrupted and distant hydrological connection between the subject site and the designated sites in Dublin Bay due to the wastewater pathway.
- 9.8.5. The subject site is identified for development through the land use policies of the Dublin City Development Plan 2022-2028. This statutory plan was adopted in June 2022 and was subject to AA by the planning authority, which concluded that its implementation would not result in significant adverse effects to the integrity of any Natura 2000 areas. I also note the development is for a relatively small residential development providing for 59 no units, on serviced lands in an urban area. As such the proposal will not generate significant demands on the existing municipal sewers for foul water and surface water. Furthermore, I note upgrade works have commenced on the Ringsend Wastewater Treatment works extension permitted under ABP – PL.29N.YA0010 and the facility is subject to EPA licencing (D0034-01) and associated Appropriate Assessment Screening. It is my view that the foul discharge from the site would be insignificant in the context of the overall licenced discharge at Ringsend WWTP, and thus its impact on the overall discharge would be negligible. It is also noted that the planning authority and Irish Water raised no concerns in relation to the proposed development.
- 9.8.6. The Site-Specific Demolition Method State and Outline Construction and Environmental Management Plan, the Site-Specific Construction and Demolition Waste Management Plan and the Operational Waste Management Plan submitted with the application state that all waste from the construction phase and the operational phase would be disposed of by a registered facility.

9.8.7. The site is located in an urban area and has not been identified as an ex-situ site for qualifying interests of a designated site and I am satisfied that the potential for impacts on wintering birds, due to increased human activity, can be excluded due to the separation distances between the European sites and the proposed development site, the absence of relevant qualifying interests in the vicinity of the works and the absence of ecological or hydrological pathway. Petalwort is identified as the only species listed as a qualifying interest of the SAC'S linked to the site. Impacts on Petalwort can be ruled out as there is no hydrological connection or alternative pathway between the site and Petalwort, which grows on North Bull Island.

9.8.8. It is evident from the information before the Board that on the basis of the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions on file, the information submitted as part of the applicant's Appropriate Assessment Screening report that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on the South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Estuary SPA (00024), North Bull Island SPA (004006), or any European Site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

#### In Combination Effects

9.8.9. The development is not associated with any loss of semi-natural habitat or pollution which could act in a cumulative manner to result in significant negative effects to any SAC or SPA.

9.8.10. The development has the potential to interact with the construction of the Dodder Greenway should the construction phases coincide. However, the Appropriate Assessment screening carried out as part of the Dodder Greenway concluded that *"there is no potential for cumulative impacts arising in combination within any other plans or projects and therefore no potential for in combination effects on the integrity of the European Sites"*. In addition to the independent nature of the developments removed from one another, it can be determined that there are no projects which can

act in combination with the development which can give rise to significant effect to Natura areas within the zone of influence.

- 9.8.11. 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 surface water will drain to surface water drain on Milltown Road. The foul 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.
- 9.8.12. 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*

- 9.9. 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*

- 9.10. 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 (000200), 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.

## 10.0 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.

## 11.0 Reasons and Considerations

Having regard to:

- a. The site's location on lands zoned 'Z1' 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. Housing for All – A New Housing Plan for Ireland, 2021
- f. The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- g. 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;
- h. Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020;
- i. The Urban Development and Building Heights Guidelines for Planning Authorities 2018, and
- j. 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.

## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 28<sup>th</sup> July 2022 as amended by further information submitted on 22<sup>nd</sup> December 2022 and by further plans and particulars submitted to An Bord Pleanála on 23<sup>rd</sup> 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 proposed development shall be amended as follows:
  - This permission relates to a total of 55 no. units only.
  - Block B shall be omitted from the scheme in its entirety and a revised landscaping scheme which incorporates these lands into the communal open space shall be submitted for the written agreement of the Planning Authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

3. 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.

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. Prior to the commencement of any work on site, the developer:
- i) shall engage the services of an independent, qualified arborist, for the entire period of construction activity.
  - ii) shall inform the planning authority in writing of the appointment and name of the consultant. The consultant shall visit the site at a minimum on a monthly basis, to ensure the implementation of all of the recommendations in the revised tree reports and plans, once agreed.
  - iii) shall ensure the protection of trees to be retained
  - iv) submit photographs and confirmation that fencing for retained trees meets BS5837:2012 "Trees in Relation to Design, Demolition and Construction – Recommendations" for the written agreement of the Planning Authority.
  - v) All works on retained trees shall comply with proper arboricultural techniques conforming to BS 3998:2010 Tree Work – Recommendations. To ensure and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development.

vi) The clearance of any vegetation including trees and scrub shall be carried out outside the bird-breeding season (1st day of March to the 31st day of August inclusive) or as stipulated under the Wildlife Acts 1976 and 2000.

vii) The arborist shall carry out a post construction tree survey and assessment on the condition of the retained trees.

viii) A completion certificate is to be signed off by the arborist when all permitted development works are completed and in line with the recommendations of the tree report.

ix) The certificate shall be submitted to the planning authority for written agreement upon completion of the works.

**Reason:** To ensure the retention, protection and sustainability of trees during and after construction of the permitted development

7. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of [three] years from the substantial completion of the development with others of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To secure the protection of the trees on the site

8. A schedule of all materials to be used in the external treatment of the development to include a variety of high-quality finishes, such as brick and stone, roofing materials, windows and doors shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of visual amenity and to ensure an appropriate high standard of development.



9. 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.

10. 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.

11. 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

12. 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.

13. 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. The Construction Management Plan shall specifically address the points raised within the submission by TII to The Planning Authority. 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.

14. Drainage arrangements including the updates to the Site Specific Flood Risk Assessment, 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

15. Prior to the commencement of any work on site, the developer:
- (i) shall submit the final traffic signal infrastructure design drawings for the Milltown Road and the site access junction to the planning authority for written agreement. The signalisation shall be in accordance with DCC standards and to the specifications of DCC ITS. A Road Safety Audit shall be provided as part of the submission. The works shall be at the applicant/developer's expense.
  - (ii) shall submit to the planning authority for written agreement details of emergency vehicle access arrangements for the development.
  - (iii) Shall ensure that car parking spaces shall be permanently allocated to the proposed use and shall not be sold, rented or otherwise sub-let or leased to other parties. Six no. spaces shall be allocated to car share. 50% of spaces shall be fitted with EV charging equipment and all remaining spaces shall be ducted to facilitated future installation of EV charging equipment.

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

16. The developer shall liaise with Transport Infrastructure Ireland and appropriate agreements between TII, Luas Operator and the developer shall be undertaken and completed prior to the commencement of development regarding the proposed development works located in close proximity to a Luas Line. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination

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

17. 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

18. 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

19. 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.

20. 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

21. 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.

22. 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.

23. 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

19<sup>th</sup> October 2023

## EIA -Screening Determination

A. CASE DETAILS		
<b>An Bord Pleanála Case Reference (315883-23)</b>		
<b>Development Summary</b>	Demolition of the existing building (comprising the residential dwelling known as 'Dunelm') and structures on site and the construction of a Build-to-Rent (BTR) residential development, comprising 63 no. BTR apartments on lands at 'Dunelm', Rydalmount, Milltown Road, Dublin 6.	
	Yes / No / N/A	Comment (if relevant)
<b>1. Was a Screening Determination carried out by the PA?</b>	Yes	EIA not required
<b>2. Has Schedule 7A information been submitted?</b>	Yes	
<b>3. Has an AA screening report or NIS been submitted?</b>		A / Appropriate Assessment Screening Report and Natura Impact Statement were submitted with the application. An Ecological Impact Assessment and Agricultural Assessment were also submitted with the application.
<b>5. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA</b>		SEA and AA were undertaken in respect of the Dublin City Development Plan 2022-2028

DECISION CASHED

**B. EXAMINATION**

Where relevant, briefly describe the characteristics of impacts (ie the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect

(having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)

Is this likely to result in significant effects on the environment?

Yes/ No/  
Uncertain

**1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)**

**1.1** Is the project significantly different in character or scale to the existing surrounding or environment?

There is a clear consistency in the nature and scale of development in the surrounding area, primarily comprising suburban housing estates to the south, east and west. The proposed development would provide for a new residential development at an outer urban location that is not regarded as being of a scale or character significantly at odds with the surrounding pattern of development.

No

**1.2** Will construction, operation, decommissioning or demolition works causing physical changes to the locality (topography, land use, waterbodies)?

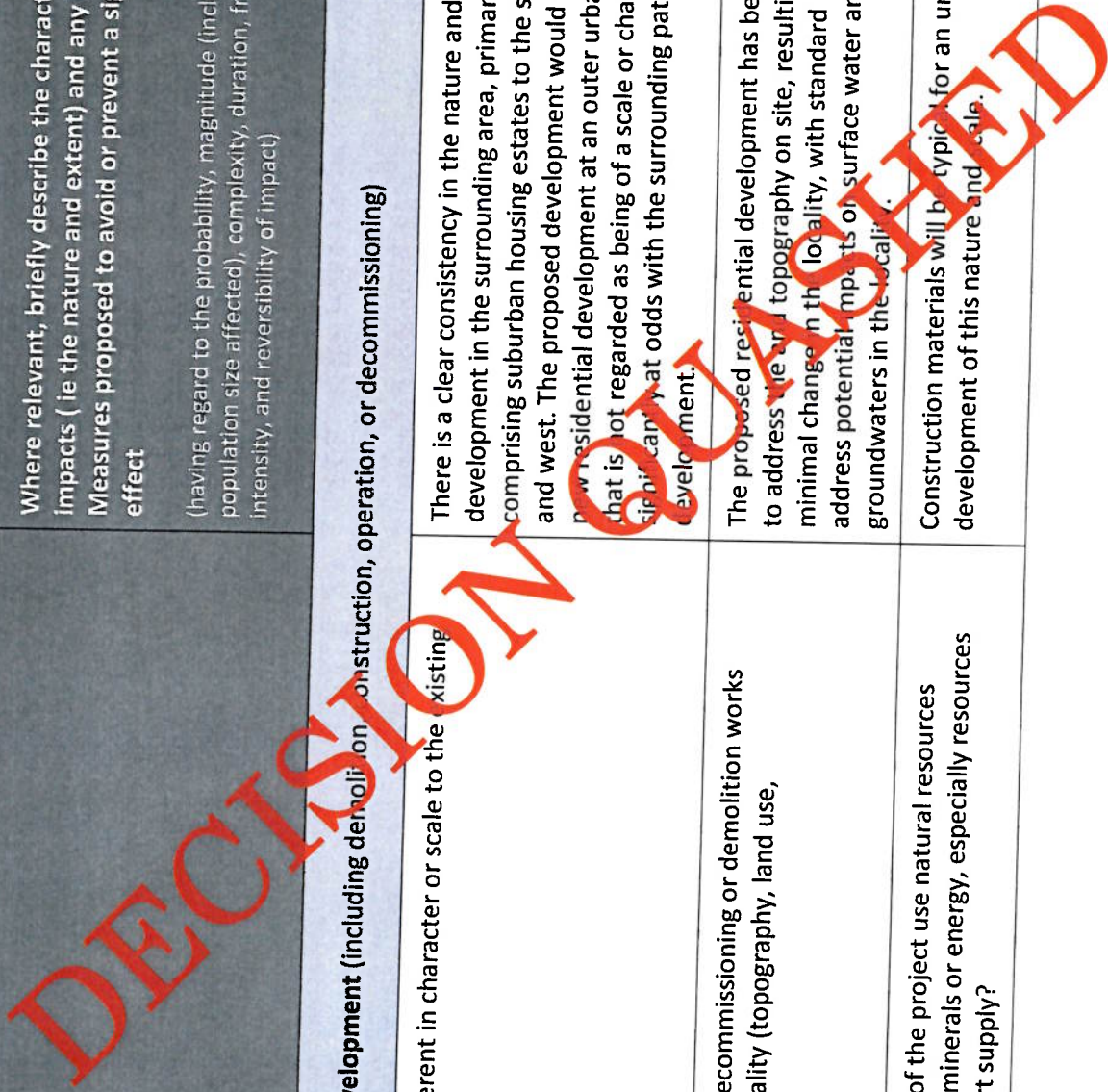
The proposed residential development has been designed to address the land topography on site, resulting in minimal change in the locality, with standard measures to address potential impacts on surface water and groundwaters in the locality.

No

**1.3** Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?

Construction materials will be typical for an urban development of this nature and scale.

No



<p><b>1.4</b> Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances. Use of such materials would be typical for construction sites. Any impacts would be local and temporary in nature and the implementation of the standard construction practice measures outlined in the Outline CEMP, Outline CMP and Construction and Demolition Waste Management Plan (CDWMP) would satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p>	<p><b>No</b></p>
<p><b>1.5</b> Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other similar substances and give rise to waste for disposal. The use of these materials would be typical for construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature, and with the implementation of the standard measures outlined in the Construction Environmental Management Plan, Construction &amp; Demolition Waste Management Plan, the project would satisfactorily mitigate the potential impacts. Operational waste would be managed through a waste management plan to obviate potential environmental impacts. Other operational impacts in this regard are not anticipated to be significant.</p>	<p><b>No</b></p>
<p><b>1.6</b> Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>Operation of the standard measures listed in the Construction Environmental Management Plan, Construction &amp; Demolition Waste Management Plan will satisfactorily mitigate emissions from spillages during construction and operation. The operation of development will connect to mains services and discharge surface</p>	<p><b>No</b></p>

DECISION

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		waters only after passing through fuel interceptors and SUDS. Surface water drainage will be separate to foul services within the site.	
1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?		There is potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised and short term in nature, and their impacts would be suitably mitigated by the operation of standard measures listed in the Construction Environmental Management Plan.	No
1.8 Will there be any risks to human health, for example due to water contamination or air pollution?		Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of standard measures within the Construction Environmental Management Plan would satisfactorily address potential risks on human health. No significant operational impacts are anticipated for the piped water supplies in the area.	No
1.9 Will there be any risk of major accidents that could affect human health or the environment?		No significant risk is predicted having regard to the nature and scope of the development. Any risk arising from demolition and construction will be localised and temporary in nature. The site is not at risk of flooding.	No
1.10 Will the project affect the social environment (population, employment)		Development of this site would result in an increase in population in this area. The development would provide housing that would serve towards meeting an anticipated demand in the area.	No
1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?		No	No
<b>2. Location of proposed development</b>			

DECISION

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<p><b>2.1</b> Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ul style="list-style-type: none"> <li>a) European site (SAC/ SPA/ pSAC/ pSPA)</li> <li>b) NHA/ pNHA</li> <li>c) Designated Nature Reserve</li> <li>d) Designated refuge for flora or fauna</li> <li>e) Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</li> </ul>	<p>The nearest European sites are listed in Section 9 of this report and other designated sites are referenced in the application AA Screening Report. Protected habitats or habitat suitable for substantive habituating of the site by protected species were not found on site during ecological surveys. The proposed development would not result in significant impacts to any protected sites, including those downstream</p>	<p>No</p>
<p><b>2.2</b> Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?</p>	<p>The proposed development would not result in significant impacts to protected, important or sensitive species</p>	<p>No</p>
<p><b>2.3</b> Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>	<p>No evidence of archaeological features on the site. The southern part of the site is partially within the zone of archaeologically potential associated with a millrace that ruins into Darty Due Works (DU022-096). Any impact will be mitigated by Archaeological monitoring on site. Adjoining Protected Structures are removed from the site. The impact of the development is not anticipated to be significant</p>	<p>No</p>
<p><b>2.4</b> Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p>	<p>No such features are in this outer-urban location, with the site separated from agricultural areas by intervening urban lands and road infrastructure</p>	<p>No</p>
<p><b>2.5</b> Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</p>	<p>The development will implement SUDS measures to control surface water run-off. The development would not increase risk of flooding to downstream areas with surface water to discharge at greenfield runoff rates. No surface water features in the vicinity of the site.</p>	<p>No</p>
<p><b>2.6</b> Is the location susceptible to subsidence, landslides or erosion?</p>	<p>No</p>	<p>No</p>

<p><b>2.7</b> Are there any key transport routes(eg National primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</p>	<p>The site is served by a local road network. There are sustainable transport options available for future residents. No significant contribution to traffic congestion is anticipated to arise from the proposed development.</p>	<p><b>No</b></p>
<p><b>2.8</b> Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?</p>	<p>The site is in close proximity to a hospital and schools. However there is no negative impact anticipated as a result of the proposal.</p>	<p><b>No</b></p>
<p><b>3. Any other factors that should be considered which could lead to environmental impacts</b></p>		
<p><b>3.1 Cumulative Effects:</b> Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?</p>	<p>No existing or permitted developments have been identified in the immediate vicinity that would give rise to significant cumulative environmental effects with the subject project.</p>	<p><b>No</b></p>
<p><b>3.2 Transboundary Effects:</b> Is the project likely to lead to transboundary effects?</p>		<p><b>No</b></p>
<p><b>3.3</b> Are there any other relevant considerations?</p>		<p><b>No</b></p>
<p><b>C. CONCLUSION</b></p>		
<p><b>No real likelihood of significant effects on the environment.</b></p>	<p>Agreed <input type="checkbox"/></p>	<p>EIAR Not Required</p>
<p><b>Real likelihood of significant effects on the environment.</b></p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>
<p><b>D. MAIN REASONS AND CONSIDERATIONS</b></p>		
<p>Having regard to</p>		

DECISION QUASHED

the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i), 10(b)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;

- the location of the proposed residential units on lands zoned within the Dublin City Development Plan 2022-2028 as 'Z1 - Sustainable Residential Neighbourhoods' with a stated objective 'to protect, provide and improve residential amenities', and the results of the Strategic Environmental Assessment of the Development Plan;
- the nature of the existing site and the nature of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001, as revised;
- the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- the features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction and Demolition Waste Management Plan, the Outline Construction and Environmental Management Plan, Demolition Method Statement, the Conservation Assessment and the Engineering Services Report. It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

DECISION QUASHED

Inspector Grene McCornack

Date 15/10/23

Approved (DP/ADP) Conor Ryan

Date 20/10/23