



An
Bord
Pleanála

Inspector's Report

ABP-317146-23

Development	Demolition of a single storey flat roofed storage building and the construction of 5 one-bedroom apartments
Location	23/24, Rutland Place North, Dublin 1
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	4741/19
Applicant(s)	Cuisle Properties Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellant(s)	R.M. O'Hanrahan Architects
Observer(s)	Gary Solan
Date of Site Inspection	04 and 13 June 2024
Inspector	Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located on Rutland Place North, in the north-inner city. The site is currently vacant, with a large steel gate and a high wall with steel wire over. A large skip was located on the site, along with some scaffolding and construction materials.
- 1.1.2. The backland site is accessed off Rutland Place North and is bound to the north-east by the rear of a terrace of dwellings on the North Circular Road, dwellings on Summerhill to the south-east, Thompsons Cottages to the south-west and Rutland Place North to the north-west. There is a single storey shed on the site located in its north-west corner, adjoining a single storey extension to the rear of no. 22 Rutland Place North.

2.0 Proposed Development

- 2.1.1. Permission was sought for a development comprising the demolition of an existing single-storey shed and the construction of a two-story building of 5 no. one-bedroom apartments, with 15 no. bicycle spaces in a single storey bicycle store and an area of recreational open space.
- 2.1.2. Details provided in the application form include:
- Total site area: 634sq.m.
 - Total floor area of new build: 324sq.m.
 - Floor area to be demolished: 30sq.m.
 - Proposed plot ratio: 0.048,
 - proposed site coverage: 0.026

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 13th August 2020, the Planning Authority notified the parties of their intention to GRANT permission subject to 11 no. standard conditions.

3.2. Planning Authority Reports

- 3.2.1. **Engineering Department – Drainage Division:** Recommends seeking additional information due to lack of adequate information to demonstrate satisfactory proposals for drainage and flood risk. Permission should be withheld until the applicant addresses management of surface water and flood risk.

- 3.2.2. **Transportation Planning:** Further information required with regard to the accessibility of the proposed car parking spaces to the rear, bin store and details of footpath along the front of the site.
- 3.2.3. **Planning Report:** Z1 zoning objective, residential use is permissible. Proposed development is acceptable in terms of site coverage and plot ratio. Building height and massing is acceptable. Significant number of errors and omissions in drawings. Revised plans and drawings required. Amendments required to bring private open space provision up to minimum of 5sq.m. No public open space proposed. Inappropriate transition in scale but no significant overlooking. Clarification re. car parking is required. No AA issues. Further information required re. flood risk.

3.3. **Prescribed Bodies**

- 3.3.1. **TII:** proposed development falls within the area for an adopted s49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephens Green to Broom bridge Line). As a condition of grant, please include levy.

3.4. **Third Party Observations**

- 3.4.1. A number of observations to the Planning Authority raised concerns about:
- impact of the proposed development on the adjoining structures in terms of loss of light,
 - overlooking and over shadowing,
 - structural impacts on boundary walls,
 - use of upper floors of surrounding dwellings for recreational areas,
 - inadequate / incorrect drawings,
 - existing difficulties with drainage that will be exacerbated by the proposed development,
 - inadequate private open space for proposed units,
 - inadequate room sizes,
 - insufficient separation distances,
 - lack of architectural merit in the proposal,

- impact on private open space

4.0 Further Information

4.1.1. On the 25th February 2020, three items of further information were requested as per the planning report recommendations.

4.1.2. On the 17th July 2020, the applicants agent responded with a Civil Engineering Report / Flood Risk Assessment, revised unit layouts and the following:

- Boundary property line has been amended, revised eaves and gable ends to finish flush with external walls – revised drawings submitted.
- revised drawings showing interface with Thompson Cottages, revised drawing showing interface with 22 Rutland Place North
- details of boundary wall treatments,
- Car parking for service vehicles only
- Location and width of footpaths on Rutland Place North as shown on maps and as measured on site,

4.1.3. **Planning Report** following submission of Further Information, the planning report states that items 1(i) and 1(ii) are acceptable. The planner notes that previous An Bord Pleanála history referred to an unauthorised door at the rear of no. 22 Rutland Place. Planner notes that no objections raised regarding drainage submission and therefore considers it acceptable. Regarding the proposed car spaces for service / delivery vehicles, this is acceptable. Recommendation to grant permission.

5.0 Planning History

Subject site

5.1.1. Planning Authority reg. ref. **2478/19**: Permission for demolition of shed and construction of a two storey with basement student housing building and a three-storey block of three townhouses was refused for the following reasons:

- 1 The proposed development, by reason of its failure to provide a critical mass that can support a professionally managed student accommodation and provide high quality indoor recreational facilities, would be contrary to the provisions of the current Dublin City Development Plan (2016-22), including

Section 16.10.7 in relation to the provision of student accommodation, thus being contrary to the proper planning and sustainable development of the area.

- 2 The proposal, by reason of its proximity to the rear of existing dwellings along Rutland Place North and Thompson's Cottages, would be seriously injurious to the residential and visual amenity of the occupants of the adjoining properties and would be contrary to the Z1 zoning objective which is 'to protect, provide and improve residential amenities' and would therefore be contrary to the proper planning and sustainable development of the area.

5.1.2. Planning Authority reg. ref. **4100/16**: Permission for a residential student accommodation development, comprising: 6 no. student accommodation units (36 bed spaces) in a 3-storey block, caretaker unit, office, laundry facilities, with refuse and bicycle storage in a 2-storey building, together with boundary treatment, green area & landscaping and associated site development works was refused for the following reasons:

1. The proposed development, by reason of its failure to provide for any indoor recreational facilities or usable outdoor amenity space, and its backland nature and design and layout which would result in its being isolated from the local community, would be contrary to the provisions of the current Dublin City Development Plan (2016-22), including Section 16.10.7 in relation to the provision of student accommodation, thus being contrary to the proper planning and sustainable development of the area.
- 2 The proposal, by reason of its proximity to the rear of existing dwellings at Thompson's Cottages and the need to provide measures to avoid overlooking of rear windows to these dwellings, including the provision of high-level windows and translucent glazing, would result in a poor standard of amenity with inadequate natural light to future residents of the development. The proposal would, therefore, seriously injure the amenities of property in the vicinity, be contrary to the zoning objective Z1 – 'to protect, provide and improve residential amenities' and to the proper planning and sustainable development of the area.

5.1.3. **PL29N.244549** (Planning Authority reg. ref. 3855/14) : Permission for a development comprising the demolition of single storey shed and the construction of a 2.5 storey apartment / townhouse development of five 3-bedroom terraced townhouses and 1 no. attached 3-bed apartment over basement carparking, containing 6 no. car and bicycle parking spaces was refused for the following reasons:

1. It is considered that the private open space provision proposed to serve the residential units is substandard in terms of both quantity and quality as it fails to meet the development standards as contained within section 17.9.1 “Residential Quality Standards” of the Dublin City Development Plan 2011-2017. The proposed development would seriously injure the residential amenity of the occupants of the development and would contravene the zoning objective for the area, as set out in the Development Plan, which is to protect, provide and improve residential amenities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the scale, massing and height of the proposed development, and also having regard to the inadequate separation distances proposed between the townhouses and Thompsons Cottages to the south-west, it is considered that the proposed development would seriously injure the residential amenity of Thompsons Cottages by reason of overlooking and would have an overbearing visual impact on Thompsons Cottages and on the adjacent dwellings on Rutland Place North. The proposed development would, therefore, contravene the zoning objective for the area which is to protect, provide and improve residential amenities and would be contrary to the proper planning and sustainable development of the area.

5.1.4. Planning Authority Reg. Ref **5356/07**: Permission granted, subject to conditions, for the following development: Demolition of existing single storey shed structure, construction of underground car park for 6 no. car spaces including 6 storage rooms for each apartment, bin storage, with pedestrian and vehicle access/exit to basement off Rutland Place North, provision of 6 no. 3 bedroom apartments with total of 3 floors, 5 of which have private open space courtyard and 1 with private open space terrace. There is provision for communal private open space at ground level on site, provision of landscaping and all associated site services including connection to the

public mains drains and water supply, provision of 6 bicycle spaces accessible at basement level,

- 5.1.5. Planning Authority Reg. Ref. **1590/06**: Permission refused for a 4 storey apartment development at 23/24 Rutland Place, Dublin 1. Comprising of 3 no floors each containing 3 no 2 bed units and a roof/penthouse containing 1 no 2 bed unit.
- 5.1.6. Planning Authority reg. ref. **0471/00**: Permission granted for 4 no. three bedroom townhouses.

Adjoining Site at 22 Rutland Place North:

- 5.1.7. **PL29N.247010** (Planning Authority reg. ref. 2328/16): Permission for a first floor extension and retention of ground floor extension was refused for the following reason:

- 1 Having regard to the provisions of the current Dublin City Development Plan including the requirement to provide private open space and other basic residential amenities, it is considered that the proposed development would comprise substandard accommodation by failing to provide any private open space at ground level, and by failing to ensure that other basic residential amenities such as natural light and ventilation would be available within parts of the development. The proposed development and the development proposed for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

6.0 Policy Context

6.1. Project Ireland 2040: National Planning Framework

- 6.1.1. National Strategic Outcome 1, Compact Growth, recognises the need to deliver a greater proportion of residential development within existing built-up areas. Activating these strategic areas and achieving effective density and consolidation, rather than sprawl of urban development, is a top priority.
- 6.1.2. Of relevance to the subject application are the following:
- **National Policy Objective 2a:** A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs

- **National Policy Objective 5:** Develop cities and towns of sufficient scale and quality to compete internationally and to be drivers of national and regional growth, investment and prosperity.

National Policy Objective 6: Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.

- **National Policy Objective 33:** Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- **National Policy Objective 35:** Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.
- **National Policy Objective 27:** seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages.
- **National Policy Objective 33:** seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

6.2. **Sustainable Residential Development & Compact Settlement Guidelines 2024**

- 6.2.1. The guidelines expand on the higher-level policies of the National Planning Framework (NPF) in relation to the creation of settlements that are compact, attractive, liveable and well-designed. There is a focus on the renewal of settlements and on the interaction between residential density, housing standards and placemaking to support the sustainable and compact growth of settlement.
- 6.2.2. In accordance with the provisions of Section 34 of the Act when making a decision in relation to an application that includes a residential element or other elements covered by these guidelines, the planning authority is required to have regard to the

policies and objectives of the Guidelines and to apply the specific planning policy requirements (SPPRs).

6.2.3. Of relevance to the subject application are the following:

- Residential densities of 50-250dhp for city-urban neighbourhoods in Dublin and Cork with typical density range for low rise apartments – c.100-150 dph,
- **SPPR1** – separation distances of c.16m between directly opposing first floor windows
- **SPPR2** - Apartments and duplex units shall be required to meet the private and semi-private open space requirements set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities 2023 (and any subsequent updates). All residential developments are required to make provision for a reasonable quantum of public open space.
- **SPPR3**: In city centres and urban neighbourhoods of the five cities, defined in Chapter 3 (Table 3.1 and Table 3.2) car-parking provision should be minimised, substantially reduced or wholly eliminated. The maximum rate of car parking provision for residential development at these locations, where such provision is justified to the satisfaction of the planning authority, shall be 1 no. space per dwelling.
- **SPPR4**: It is a specific planning policy requirement of these Guidelines that all new housing schemes (including mixed-use schemes that include housing) include safe and secure cycle storage facilities to meet the needs of residents and visitors. The following requirements for cycle parking and storage are recommended:
 - (i) Quantity – in the case of residential units that do not have ground level open space or have smaller terraces, a general minimum standard of 1 cycle storage space per bedroom should be applied. Visitor cycle parking should also be provided. Any deviation from these standards shall be at the discretion of the planning authority and shall be justified with respect to factors such as location, quality of facilities proposed, flexibility for future enhancement/enlargement, etc. It will be important to make provision for a mix of bicycle parking types including larger/heavier cargo and electric bikes and for individual lockers.
 - (ii) Design – cycle storage facilities should be provided in a dedicated facility of permanent construction, within the building footprint or, where not feasible, within

an adjacent or adjoining purpose-built structure of permanent construction. Cycle parking areas shall be designed so that cyclists feel safe. It is best practice that either secure cycle cage/compound or preferably locker facilities are provided.

6.3. Sustainable Urban Housing: Design Standards for New Apartments

- 6.3.1. The minimum floor area for one-bedroom apartments is 45m², for two-bedroom apartments it is 73m² and for three-bedrooms it is 90m². Most of proposed apartments in schemes of more than 10 must exceed the minimum by at least 10%. Requirements for individual rooms, for storage and for private amenities space are set out in the appendix to the plan, including a requirement for 3m² storage for one-bedroom apartments, 6m² for two-bedroom apartments and 9m² for three-bedroom apartments. In suburban locations a minimum of 50% of apartments should be dual aspect. Ground level apartments should have floor to ceiling heights of 2.7m.

6.4. Dublin City Development Plan 2022-2028

- 6.4.1. The subject site is zoned Z1: Sustainable Residential Neighbourhoods in the 2022-2028 city Development Plan. Z1 lands have the stated objective to 'protect, provide and improve residential amenities'. Residential is a permissible use.

- 6.4.2. Policies of relevance to the proposed development include:

- **QHSN2:** To have regard to the DEHLG Guidelines on 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007), 'Sustainable Urban Housing: Design Standards for New Apartments' (2020), 'Sustainable Residential Development in Urban Areas' and the accompanying 'Urban Design Manual: A Best Practice Guide' (2009), Housing Options for our Aging Population 2019, the Design Manual for Quality Housing (2022), the Design Manual for Urban Roads and Streets (DMURS) (2019), the Urban Development and Building Height Guidelines for Planning Authorities (2018) and the Affordable Housing Act 2021 including Part 2 Section 6 with regard to community land trusts and/or other appropriate mechanisms in the provision of dwellings.
- **QHSN6 Urban Consolidation** To promote and support residential consolidation and sustainable intensification through the consideration of applications for infill

development, backland development, mews development, re-use/adaption of existing housing stock and use of upper floors, subject to the provision of good quality accommodation.

- **QHSN11 15-Minute City** To promote the realisation of the 15-minute city which provides for liveable, sustainable urban neighbourhoods and villages throughout the city that deliver healthy placemaking, high quality housing and well designed, intergenerational and accessible, safe and inclusive public spaces served by local services, amenities, sports facilities and sustainable modes of public and accessible transport where feasible.
- **QHSN36 High Quality Apartment Development** To promote the provision of high quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and within each apartment development, and ensuring that suitable social infrastructure and other support facilities are available in the neighbourhood.

6.4.3. Development management standards applicable to the proposed development are set out in Chapter 15 and Appendix 3 of the Development Plan.

6.5. Natural Heritage Designations

6.5.1. The subject site is approximately 1.5km from the South Dublin Bay and River Tolka Estuary (004024) and 3.4km from the South Dublin Bay SAC (000210)

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. A resident of no. 8 Thompson Cottages, has appealed the decision of the Planning Authority to grant permission. The grounds of the appeal can be summarised as follows:

- The lack of contiguous elevations and cross-sectional drawings across the site results in the Authority not being fully informed on the proximity, mass and scale of the proposed development relative to adjacent properties,
- Roof profile cannot be realised. Block plan, site plan and 3D drawings do not match. Roof pitch is 18°, should be a minimum of 25°. This would raise the ridge

substantially beyond the adjoining properties and would be taller than permission.

- The addition of a ramp on the existing narrow footpath will cause difficulty for the elderly living in the area, as it is the only pedestrian access to Summerhill. A recessed entrance might provide a better solution.
- Submitted drawings, when calculated (203.8 sq.m. ground floor + 149.8sq.m. first floor + 16.4sq.m. bicycle shed on a site of 627.9sq.m.) give a plot ratio of 0.59 and not the 0.42 stated in the planners report. This raises questions about the veracity of the assessment.
- No explanation why the Planning Authority considered the building height and massing acceptable. The proposed development is substantial compared to its neighbours.
- The buildings on Thompson Cottages are actual cottages, with not many similar left in Dublin.
- The scale, massing, rhythm of fenestration and building lines of the proposed development are in contrast to the objectives of 16.2.1 Design Principles of the development plan.
- The subject site is vacant, with no buildings to refurbish. Therefore SPPR 2 does not apply. The proposed development, with 100% one-bed units contravenes SPPR 1.
- No analysis of the boundary treatment. Where significant overlooking will occur, a softened interface would mitigate. The proposed development has 5 no. randomly placed trees at the northern boundary.
- Of the trees proposed to the rear of Thompson Cottages, one has a maximum height of 12m and a spread of 10m. Another has a max height of 18m and a spread of 4m and a root ball of similar size. The surrounding houses date from 1869, have lime mortar, low quality buff brick and much original construction. Additional extensions (1930's) are on compacted stone on earth. This would not withstand significant growth beneath. The Board is requested to restrict planting within 6m of the shared boundary.

- The planning report incorrectly refers to the single storey element of the development being to the rear of no.s 8&9 Thompsons Cottages. The development will be to the rear of no.s 9&10 and the transition in scale is uncomfortable.
- The separation distance from the first floor window of the bedroom in 8 Thompsons Cottages is 8.87, significantly less than the 22m required in the development plan. Separation distance of 14.72m from that window to the corner balcony. This does not comply with the development management standards in chapter 16 of the development plan. No attempt made to minimise overlooking from projecting balconies.
- Windows in the proposed development cannot be considered to be 'carefully positioned' or 'well designed' as required by section 16.10.2 of the development plan. Several windows point directly at existing upper floor windows of 584,586 and 588 North Circular Road, without the required 22m separation distance.
- Previous application PL29N.244549 had closest structure 0.8m from the rear of no. 7 and 8 Thompson Cottages. Inspector considered separation distance to be inadequate, with no design justification for a relaxation of the 22m standard. This is now the case for the proposed development and no.s 7,8,9 and 10 Thompsons Cottages, but with the addition of a blank gable wall at the rear of their property. There is an existing blank gable wall at the front of their properties.
- There will be a tunnel effect at no.s 21 and 22 Rutland Place North, with overshadowing of the ground level courtyard and loss of early morning light. No.s 584 and 586 North Circular Road will lose evening light all year round.
- The proposed private open space will be beneath the bedroom windows of the appellants house no. 8 Thompson Cottages. This is contrary to the open space requirements of the development plan.
- The Planning Authority assessment that the scale of the proposed development is 'largely in keeping with that of the neighbouring properties' is rejected as being untrue.

- The subject development proposes two car spaces, notwithstanding the Planning Authority statement that none are proposed.
- Four of the five apartments are accessible only through the rear. There is no evidence that a fire tender can access the site. The access route at 2.55m is far less than the required 3.7m. Significant safety issue.
- The existing drainage layout submitted is missing information. Nearly all Thompson Cottage discharge foul and surface into private drains that traverse the site to connect to Dublin City Council at the front of the site. Condition no. 8(f) of the Planning Authority decision which stipulates that private drains cannot run through the site is not enforceable.
- The 2019 Planning Authority drainage report states that 36 no. properties connect to the system. Appellant suggests it is many more.
- If permission is granted, clarity on drainage is required.
- The majority of the 'objectives' quoted in the planning report cannot be met: QH20, section 16.10.10 and section 16.2.11.
- The proposed development does not comply with the zoning objective as it does not protect residential amenities. It is submitted that there are other solutions to developing the site but the Board is requested to refuse the subject proposal.

7.2. Planning Authority Response

7.2.1. None on file.

7.3. Observations

7.3.1. Owner of 22 Rutland Place North, directly adjoins the subject site. Photos submitted. Observation on third-party appeal can be summarised as follows:

- Application should have been invalidated, not subject to a Further Information request. Response to Further Information did not address the issues raised.
- Proposed ridge line above property will create a downdraft on existing chimney.
- Observers property has no external walls, existing chimney holds gas boiler vent. Proposed development will create a downdraft that will cause carbon monoxide to enter the property.

- A kitchen door that is in existence for many years, opens on to the site. Proposed development which is mm from the door, will block light and access.
- No other side or rear walls – door is only source of light and ventilation.
- Applicants photo no. 14 shows the derelict shed. Observer wishes to be clear that door is not for the shed, but to his kitchen.
- The subject proposal has failed to consider mass, scale, height, overlooking and existing amenity of adjoining properties. Proposal does not comply with zoning objective.
- Queries why previous reasons for refusal were overcome in the subject application, as nothing in subject proposal overcomes previous concerns – particularly the proximity to adjoining properties and scale, mass and height.
- Proposed development does not comply with 22m separation distance. Blank façade outside existing dwellings will diminish residential amenity.
- Only cm to spare as vehicles enter and leave the site, creating a traffic hazard.
- Proposed development fails to meet open space standards.
- Only 20% of units are dual aspect, in contravention of 2015 guidelines.
- No contiguous elevations submitted, leaving Planning Authority not fully informed.
- Confusion over proposed roof profile between all the drawings.
- Inaccurate calculation of plot ratio and site coverage.
- No explanation of planner's assessment of acceptable height, scale and massing.
- Proposed development does not comply with design principles of the development plan.
- SPPR 2 is not relevant to the proposal. Development does not comply with SPPR1.
- Serious concern over proposed boundary treatment.

- Private drains already transverse the site so the proposed development cannot comply with condition no. 8 of the Planning Authority decision. Greater scrutiny of the drainage proposals required. This formed previous reason for refusal.
- Drawings and development description are inadequate and misleading.
- Previous reasons for refusal remain applicable to the subject proposal.
- Rutland Place north is narrow, only one car width. Multiple properties open on to the lane.
- Access to the site to clear drains will be blocked. Allegations that the observer encroached on to the site are rejected. The Observer owned his property before the current owner bought the subject site.
- Subject site owner has removed the shared access to the site. Any rights associated with Kennedys Cottages are long gone.
- Proposed development suggests works to living room of observers property.
- Board is requested to protect the rights of adjoining properties, which have been in existence since 1899 and are in regular use.
- Site was commercial until recently. Access was given to surrounding properties who helped maintain the site. Site has been allowed to fall into disrepair, with anti-social behaviour.
- Observer has right to light and access / egress.
- Proposed development ignores the need to access drains.
- Development of the site as a continuation of the terrace is only suitable option. Infill site that should be developed at a low density. Development must be 2.4m from Observers property.
- Proposed development is not in keeping with pattern of development. Impact of proposed development on adjoining properties a concern. Character and scale are inappropriate, will cause overlooking, over shadowing and injury to residential amenity.
- Board requested to refuse permission.

7.4. Applicant Response to Appeal

- Site has been vacant since 1942. Long planning history on site
- Site is very difficult. Consistent failure of drainage led to Dublin City Council constructing a new main sewer through the site some decades ago.
- Due to ongoing difficulties, applicant will construct a new two-pipe system. Approved by drainage department.
- To minimise impact on adjoining properties, 18° roof will be constructed with materials that can be constructed as low as 12°. This was accepted by Dublin City Council.
- The subject site has been designated a 'derelict site'. The appellant fails to note that the city development plan provides for a relaxation of standards in section 16.10.10.
- The rear of no. 8 Thompsons Cottages is at right angles to the proposed development and as such no. 8 overlooks the development, rather than the other way. The 22m standard separation distance is not applicable.
- The appellants drawings show that there will be no overlooking.
- The requirement for fire tenders is the provision of access to a dry riser. This has been provided.
- The appellants Plates have omitted windows on his property.
- There is no change to the profile between the subject proposals and the current situation.
- The Board is requested to grant permission.

7.5. Applicants Response to Observer

- 7.5.1. The Observer has claimed rights over the subject site in previous applications. The applicant states that legal matters are not within the remit of the Board. A letter from the applicants solicitor dated, 23 October 2020, submitted with the response states that no documentary evidence has been furnished in respect any rights in favour of 22 Rutland Place. The legal agent states that doorways that were unlawfully opened on to the applicant site were closed by the applicant.

8.0 Court Order

- 8.1.1. Following a decision of the High Court to quash an earlier decision of An Bord Pleanála, the subject appeal was remitted to the Board to be determined in accordance with the terms of the Court Order.
- 8.1.2. A Board direction dated 01/06/2023 noted that the appeal was remitted back to the Board for a fresh determination. All participants in the appeal were invited under section 131 of the Act, as amended to make further submissions / observations on the appeal. The direction notes that, in addition, the Observer was invited under section 132 of the Act to submit further information on the planning status of the extension and doorway at 22 Rutland Place North. The direction required the previous Inspectors report be removed from the file and a new de novo assessment of the appeal to be undertaken.

8.2. Submissions on File following Board Direction

- 8.2.1. Dublin City Council
- A review of the Dublin City Council APAS planning application system shows the planning history of the site to be reg. ref. 2328/16, refused on appeal under PL29N.247010
 - No other planning history has been recorded on the Dublin City Council planning system.
 - No enforcement history found on this site.
 - The Planning Authority request that the Board uphold their decision. If permission is granted, the following conditions to be applied:
 - S48 development contribution,
 - S49 Luas X City development contribution,
 - Condition requiring the payment of a bond,
 - Condition requiring the payment of a contribution in lieu of the open space requirement not being met if applicable
 - Naming and numbering condition
 - Management condition.

8.2.2. Gary Solan, owner of 22 Rutland Place North

- During High Court proceedings the issues of drainage on the site, observers chimney & ventilation were raised.
- The Board is required to address the public health concerns and right to light. This was not adequately considered in the previous report.
- The applicant misled the Planning Authority and the Board with inaccurate drawings.
- There is no evidence that works to improve drainage have been undertaken, giving a misleading impression. The drain is private and consent from all concerned should have been sought. Previous planning applications addressed the issue correctly.
- A 2011 enforcement file regarding an unauthorised first floor bedroom, referred to the previous owner.
- The Observer is supportive of appropriate development of the site, one that does not injury the habitability of his property.
- It cannot be definitively declared that no permission exists for the ground floor extension. Records could have been lost. Absence of a permission is not proof that a development is unlawful or unauthorised.
- Following site inspections by Dublin City Council, the extension was considered exempted development. An application for retention of the extension was refused by An Bord Pleanála, however this does not affect the exempted status of the extension.
- Subject proposal is not suitable for the site.
- Submission is accompanied by High Court Booklet of Exhibits

9.0 **Assessment**

- 9.1.1. I have examined the file including all reports of the Planning Authority, and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed

development and I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Residential Amenity
- Impact on Adjoining Properties
- Drainage
- Other

9.2. Principle of Development

- 9.2.1. The subject site is on lands zoned for residential development, namely Z1. Since the application was lodged with the Planning Authority, a new development plan has been adopted. The zoning objective for the site remains the same: to 'protect, provide and improve residential amenities'. Residential is a permissible use.
- 9.2.2. The proposed infill development on a brownfield site, at a density that is commensurate with the surrounding pattern of development is an appropriate use of zoned and serviced land in an inner-urban site. Given the proximity of the site to the city centre, retail and employment centres, and many public transport options, the current use is not an efficient use of zoned serviced land. Subject to other planning considerations, the development of the site for residential development is appropriate and in keeping with the zoning objective for the site.

9.3. Residential Amenity

- 9.3.1. The subject site, being a city-urban neighbourhood, is suitable for a density in the range of 50dph to 250dph (net), according to the Sustainable and Compact Settlements Guidelines (table 3.1). The proposed development complies with this standard.
- 9.3.2. SPPR1 of the compact growth guidelines specifies that when considering an application for residential development, a separation distance of at least 16m between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained. There are no windows proposed on the western elevation, facing Thompsons Cottages. To the southeast, there is in excess of 20m separation distance. To the east, the separation distance from the first-floor windows to the rear of the dwellings

along North Circular Road (particularly no. 586 which has a two storey rear return), at 14m is less than the required 16m. I note that SPPR1 provides for a relaxation of the standard where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces. The proposed development meets that requirement, in proposing a semi-mature tree with a total height of 4.5-6m along the boundary between the properties. Given the dense pattern of development in the immediate area, I am satisfied that the separation distances are broadly in keeping with the guidelines and the existing built environment.

- 9.3.3. In terms of open space, SPPR2 requires that apartments meet the private and semi-private open space requirements of the 2023 guidelines. The proposed residential units exceed the 45sq.m. requirement of the Design Standards for New Apartments, Guidelines and table 15-5 of the 2022 Dublin City Council Development plan. In terms of open space, 130sq.m. is proposed.
- 9.3.4. Section 5.3.4 of the Compact Settlement Guidelines 2024 states that in areas where car-parking levels are reduced studies show that people are more likely to walk, cycle, or choose public transport for daily travel and that car parking ratios should be reduced at all urban locations, and should be minimised, substantially reduced or wholly eliminated at locations that have good access to urban services and to public transport. To that end, SPPR3 of the of the Guidelines provides “ (i) In city centres and urban neighbourhoods of the five cities... car parking should be minimised, substantially reduced or wholly eliminated. The maximum rate of car parking provision for residential development at these locations, where such provision is justified to the satisfaction of the planning authority, shall be 1 space per dwelling. The proposed development with two car spaces for emergency services and 15 no. bicycle spaces (SPPR4) is acceptable.
- 9.3.5. I am satisfied that that the orientation of the proposed development and its relationship to the surrounding residential development is such that no overshadowing will occur.
- 9.3.6. I am satisfied that the proposed re-development of this vacant, under-used site for a residential scheme is in keeping with the following policies of the 2022-2028 Dublin

City Council development plan: QHSN6 which refers to urban consolidation, QHSN11 which refers to the 15 minute city and QHSN36 which encourages high quality apartment development. I am satisfied that that notwithstanding that two of the proposed units are single-aspect, the residential amenity provided by the proposed units is acceptable and in keeping with national and local planning policy on development management standards for residential amenity.

9.4. Impact on Adjoining Properties

- 9.4.1. The Board direction of 01/06/2023 states that the Observer Gary Solan, should be requested under s132 of the Act, to submit further information on the planning status of the doorway. A further s131 notice invited all parties to “make any further submissions / observations in relation to the appeal. As noted above, both the Observer and Dublin City Council responded.
- 9.4.2. The Observers submission refers to an enforcement file E0709/11 that was opened regarding an unauthorised first floor bedroom to the rear of 22 Rutland Place North (the observers property). I can find no evidence of such a file on the Dublin City Council records and I note that Dublin City Council state that no enforcement history exists for 22 Rutland Place North.
- 9.4.3. The brief of evidence submitted by the Observer to the High Court and submitted to the Board in response to the s132 and s131 (page 266) provides details of enf. Ref. E0709/11. Photos on that file show a two-storey extension under construction at no. 22, (report is dated 12th December 2011). Photos on the enf. File for no. 20 Rutland Place show the construction of a two-storey extension at no. 22 Rutland Place, including a ground floor door into the subject appeal site. A subsequent Enforcement file dated July 2012 states that no access to the house was possible on the date of the site visit but that a limited inspection showed that the first floor extension had been removed. It was recommended that the file be closed.
- 9.4.4. A further enforcement file is presented in the brief, reg. ref. E0207/17 stating that it was alleged that a first-floor extension, which had previously been refused planning permission was now being constructed at no. 22 Rutland Place. The report refers to refurbishment of the property, including the ground floor extension. Photos submitted show that the side wall of the ground floor extension “*have been made higher. This*

extra height forms a parapet around the flat roof of the ground floor extension". The report states that "It is therefore considered exempt development".

- 9.4.5. It is my reading of that report that the statement of "exempt development" refers to the extension of the height of the ground floor extension via a parapet wall around the existing flat roof. I do not read the report to constitute a declaration that the existing ground floor extension is exempted development. A ground floor extension with no open space, and only source of light and ventilation through a door into an adjoining site in separate ownership could not be declared an exempted development.
- 9.4.6. To that end, I note the report of the An Bord Pleanála Senior Inspector on the 2016 third-party appeal (PL29N.247010) against the decision of Dublin City Council to grant permission for "the construction of a first-floor extension and retention of ground floor extension and ancillary site works at 22 Rutland Place North, Dublin 1. In that report, the Senior Inspector noted that the use of a boundary wall for "access, light and ventilation" where the use could not be assured was inappropriate, represented substandard development and was a reason to refuse permission. The Board agreed, stating in their reason for refusal, that in addition to other elements, that "by failing to ensure that other basic residential amenities such as natural light and ventilation would be available *within* parts of the development" (my emphasis) the proposed development would constitute substandard accommodation.
- 9.4.7. I am satisfied that that no planning permission exists for a door from no. 22 Rutland Place into the subject site and that the door cannot be considered exempted development. The length of time the door has been in existence is not germane, given that having been refused permission by the Board in 2016 its retention is unauthorised.
- 9.4.8. The impact of the proposed development on the residential amenity of adjoining properties has been raised by the Appellant and the Observer. As stated in section 9.3 above, I am satisfied that that the separation distances are sufficient to prevent overlooking of adjoining properties.

9.5. Drainage

- 9.5.1. Drawings submitted with the application and at Further Information stage shows the existing foul and surface drainage across the site (drawing no. 2120-200) and the proposed drainage services layout (drawing no. 2120-201). The proposed drainage system provides for a new surface water / storm water attenuation tank. Existing manholes are retained.
- 9.5.2. A Civil Engineering Services Report with Flood Risk Assessment was submitted to the Planning Authority following the request for further information. The report details the scope of services, SuDs measures, the design of the proposed storm water sewer, the design of the proposed attenuation area, the proposed foul drainage network and details for potable water supply. The Drainage Department of Dublin City Council were satisfied that the issues raised had been comprehensively addressed. I find no reason to disagree and recommend that should the Board decide to grant permission, a condition be attached requiring standard practice.
- 9.5.3. The above referenced Further Information report also addressed the issue of Flood risk, concluding that the site was not at risk of coastal or fluvial flooding and that the proposed surface water drainage measures, the site context and with the majority of the development to be undertaken above ground, would ensure that the site would not be at substantial risk of pluvial flooding. I am satisfied that that the issue of flood risk has been comprehensively addressed and that the conclusions of the assessment are robust and reasonable.

9.6. Other

- 9.6.1. The Observer submits that proposed development would have public health impacts on the operation of his **chimney** at no. 22 Rutland Place North. The proposed development has a ridge level of 106.05 at the location it adjoins no. 22 Rutland Place. The pitch of the proposed roof profile is such that the ridge height of the new building where it adjoins the existing chimney of no. 22 is lower than (the overall ridge height of) 106.05m. A difference in roof height in closely built up dense inner urban neighbourhoods is not uncommon and I am satisfied that no public health hazard will arise.
- 9.6.2. The appellant raises a concern that the placement of **trees** in close proximity to the rear boundaries of the dwellings at Thompson Cottages. Drawing no. P09 shows

three trees at this location. Given the extent of open space, the omission of these trees would not negatively impact the residential amenity provided by the communal open space. Notwithstanding that the omission would remove the mitigation factor for overlooking, should the Board decide to grant permission, it is recommended that a condition be attached requiring the developer to liaise with the Planning Authority with regard to final landscaping proposals for the site.

- 9.6.3. The submission that the proposed development would **devalue** the adjoining properties is not accepted. The subject site is vacant and under-used. The redevelopment of the site for residential use would reanimate an austere and imposing street façade that currently dominates the highly visible start of Rutland Place North. The continuation of the pattern of dense two-storey residential properties addressing the lane is considered to be an improved streetscape.
- 9.6.4. Regarding the nature and extent of **drawings** submitted to the Planning Authority, I am satisfied that the extent of information on file and the site visits undertaken by myself are sufficient to facilitate a robust and comprehensive analysis of the proposed development.
- 9.6.5. Regarding the proposed **roof profile**, the applicant has stated that the proposed pitch can be constructed as proposed. Should the Board decide to grant permission, any development must be carried out in accordance with the plans and particulars on which the Board decision is made.
- 9.6.6. The appellant submits that the applicant's figure for **plot ratio**, as stated in the application form is incorrect. Table 2 of Appendix 3 of the 2022 development plan provides for an indicative plot ratio of 2.5-3.0 in the central area of Dublin City. The proposed development complies with that standard.
- 9.6.7. Details demonstrating access to the site by **emergency vehicles** were submitted to the Planning Authority. These details are acceptable.

10.0 AA Screening

- 10.1.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located approx. 1.5km from the South Dublin Bay and River Tolka Estuary SPA (site code 004024). The proposed development comprises the development of a two-storey

building of five residential units. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion stems from the limited scale and nature of the proposed development and the lack of connections to the nearest environmentally sensitive site.

- 10.1.2. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required

11.0 Recommendation

- 11.1.1. I recommend permission be GRANTED for the following reasons and considerations and subject to the following conditions:

12.0 Reasons and Considerations

- 12.1.1. Having regard to the land-use zoning objective for the site as set out in the Dublin City Development Plan 2022-2028, to the nature, height, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would be acceptable in terms of layout, height, scale and design, would provide a suitable level of amenity for future residents, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would be served by adequate environmental services, would not endanger the health and safety of persons using neighbouring buildings, and would comply with the provisions of the Development Plan, the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in March 2018, and the Sustainable Residential Development and Compact Settlement Guidelines 2024. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 17th day of July 202, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. Reason: In the interest of clarity.

Reason: In the interest of clarity.

- 2 Each residential unit shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.

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

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

Reason: In the interest of visual amenity.

- 4 The developer shall comply with all requirements of the planning authority in relation to roads, access, lighting and parking arrangements. In particular:
 - (a) gates shall be inward opening and shall not open onto the public footpath;
 - (b) the roads and traffic arrangements serving the site (including footpath connections and signage) shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense;
 - (c) the roads layout at the vehicular entrance, parking areas, footpaths, kerbs, car parking bay sizes and road access to the development shall comply with

the requirements of the Design Manual for Urban Roads and Streets and with any requirements of the planning authority for such road works;

(d) the materials used in any roads / footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works;

(e) cycle parking shall be in situ prior to the occupation of the development.

Reason: In the interests of traffic safety and in the interest of sustainable transportation.

- 5 A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-

(a) the omission of proposed trees T1, T2 and T3 on the south-western boundary with Thompson Cottages as shown on landscape drawing no. P09

(b) details of all proposed hard surface finishes to support the principle of Sustainable Urban Drainage Systems (SUDS), including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;

(c) details of tree protection measures, proposed locations of trees and other landscape planting in the development, including species and settings;

(d) details of proposed boundary treatments within the site and at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity and sustainable drainage.

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

Reason: To protect the residential amenity of property in the vicinity and the visual amenity of the area.

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

Reason: In the interest of public health.

8. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of Dublin City Council Planning Authority for such works and services.

Reason: In the interest of public health and to ensure a satisfactory standard of development.

9. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name 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 of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

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

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

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

11. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, which shall be carried out in full, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated. **Reason:** In the interest of the environment and sustainable waste management.
12. The construction of the development shall be managed in accordance with a Construction & Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide, inter alia, details and location of the proposed construction compound(s), details of intended construction practice for the development, including hours of working, noise and dust management measures, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste.
- Reason:** In the interests of public safety and residential amenity.
13. Site development and building works shall be carried out only between the hours of 0800 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.

14. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities 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.

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

Reason: To ensure the satisfactory completion of the development.

16. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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.

17. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City project (St. Stephen's Green to Broombridge Line), 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 the permission.

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

Gillian Kane
Senior Planning Inspector

17 June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Demolition of single storey flat roofed storage building and the construction of 5 x one-bedroom apartments		
Development Address	23/24 Rutland Place North		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)			Yes
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
	Threshold	Comment (if relevant)	Conclusion
No	10. Infrastructure projects (b)(i)Construction of more than 500 dwelling units. (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.		No EIAR or Preliminary Examination required
4. Has Schedule 7A information been submitted?			
No			

Inspector: _____

Date: 17 June 2024