



An
Bord
Pleanála

Inspector's Report ABP-317483-23

Development	Construction of 2 no. apartment blocks comprising 38 no. apartment units.
Location	Site at Marlborough Road, Dublin 7, and located to the rear of properties on Marlborough Mews.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref	5046/22
Applicant(s)	Fairfield Road Property Ltd.
Type of Application	Planning Permission
Planning Authority Decision	Grant Permission w. Conds.
Type of Appeal	Third Party v Decision
Appellant(s)	Mary & Aileen Meehan Ciaran & Lisa Browne and Anthony & Catherine Thuillier David Burgoyne, Michelle Ni Longain & Caroline O'Beirne
Observer(s)	Department of Defence
Date of Site Inspection	18 th July 2024
Inspector	D. Aspell

1.0 Site Location and Description

- 1.1. The site is located generally between Marlborough Road and Marlborough Mews, Dublin 7. It is c.190m long north-to-south, and ranges in width from c.10m in the south to c.40m in the north. The North Wall extension railway runs parallel to the west. The Marlborough Court apartment block and dwellings along Marlborough Mews and North Circular Road are generally to the east. The site fronts onto Marlborough Road to the north and Marlborough Mews to the south.
- 1.2. There is significant tree and scrub growth throughout the site. Similar growth extends on adjacent lands along the railway. The central part of the site is elevated by c.5-7m above the prevailing ground level in the area.
- 1.3. Marlborough Road ends in a cul de sac outside the site. This end of Marlborough Road comprises a terrace of 13 no. dwellings on the northern side, and the Marlborough Court apartment block and Carndonagh House on the southern side. McKee Barracks is across the railway c.45m to the west. Historically, Marlborough Road connected to McKee Barracks across Marlborough Bridge, which is now disused.
- 1.4. The terrace of dwellings along the northern side of Marlborough Road are 2-storey, red-brick, pitch-roofed, Victorian-era dwellings, c.4 no. of which face the site. Marlborough Court comprises a modern, 3-storey, pitch-roof, red-brick block of apartments. Marlborough Mews comprises various modern 2-storey terraced and semi-detached mews dwellings and other structures, of which c.8 no. dwellings back onto the site. I note some dwellings at the southern end of Marlborough Mews face the site (c.3 no.).
- 1.5. McKee Barracks is a largely red-brick Victorian-era military barracks. It is c.14ha in area. Opposite the site, the Barracks perimeter comprises 1- and 2-storey buildings backing onto the railway line. Inside this, facing toward the subject site, are 4 no. large 3- and 4-storey buildings. The disused Marlborough Bridge over the railway is to the north-west of the subject site.
- 1.6. The adjacent railway line is within a railway cutting of c.9m to 10m deep at this point.

2.0 Proposed Development

2.1. The development as revised at further information can be summarised as follows:

- Two 5-storey apartment blocks comprising 34 no. apartments;
- An access from Marlborough Road, and 14 no. car parking spaces;
- Open spaces and associated development works including site clearance.

2.2. In response to further information the proposal was reduced from 38 to 34 no. units. The carpark to the south of the site to be accessed from Marlborough Mews was omitted. The size of the communal open space to the south of the site was increased. The number of trees to be removed was decreased, and additional tree planting proposed. Condition 3 of the planning authority decision lowered the height of Block B to 4 no. storeys and further reduced the number of dwellings to 31 no.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority issued a notification to grant permission (7th June 2023) with 20 no. conditions attached. I note the following conditions:

- Condition 3: Part (a) removed a floor from Block B, which reduced the permitted number of units from 34 no. to 31 no. Part (c) required agreement of details of screening of Block A facing Marlborough Court. Part (d) required opaque glazing of all east facing balconies above ground floor in Block A;
- Condition 7: Contribution in lieu of public open space;
- Condition 10: Implementation of mitigation in Biodiversity & Habitat Study;
- Condition 11: Compliance with drainage, transport and noise codes of practice.
- Condition 12: Compliance with requirements relating to transportation planning;
- Condition 13 Compliance with requirement in relation to drainage;
- Condition 14: Compliance with requirements in relation to the railway line
- Condition 16: Compliance with requirements in relation to noise & vibration.

3.2. Planning Authority Reports

Planning report

3.2.1. The final report on the planning application is summarised as follows:

- Report assessed revised proposal against the 2022-2028 development plan;
- Report noted reduction in units to 34, reduction in footprint of Block B, change of unit mix, omission of Marlborough Mews vehicular access, doubling of communal open space provision, increase in trees to be retained, additional tree planting, and provision of green roof;
- Proposal complies with Apartment Guidelines. Some concern regarding studio units which is to be addressed by condition. Proposed mix is acceptable;
- Report stated revised proposal retains more trees and provides more communal open space and as such has addressed the issues raised;
- Regarding visual impact, from the east the proposal appears as a pop-up element and would book-end the street. The roof is prominent. Proposal would not be visible from NCR (North Circular Road). Report stated the proposal would be visible from the rear of Marlborough Mews with potential overbearing impacts in this regard. A red brick finish is to be conditioned;
- 155sqm public open space is proposed to the front of Block A. Applicant will manage the space. The shortfall can be met by a contribution;
- Regarding overlooking, applicant proposes perforated metal fins to minimise overlooking of Marlborough Court. Report states that the fins would address overlooking. 2m-high sandblasted glass balconies are acceptable. The eastern edges of Block B balconies would be c.10m from the rear of Marlborough Mews houses; screening here should be conditioned to ensure no overlooking;
- Regarding McKee Barracks, the subject site is zoned residential. It is long and narrow. It would be difficult to provide dual aspect apartments that did not face the Barracks. The site is separated by the railway, the nearest Barracks buildings are low rise and have no windows or obscured glazing;

- Regarding railway embankment stability, a consulting engineer's report is submitted. It includes a methodology for excavation of the embankment. Irish Rail's recommended condition is noted;
- Regarding transportation, servicing, construction traffic, and parking, the revised transportation planning report considers the proposal is acceptable. Report noted the development will be marketed as 'low-car dependency'. Visitors can avail of nearby pay & display parking;
- Proposal is in keeping with zoning objective. Site is in the canal ring and could be considered a transitional area. Density of 122 dpha is sustainable at this location subject to compliance with standards and impact on amenity. The height could be considered in principle having regard to development plan criteria. Proposal largely addresses the previous reasons for refusal;
- Report stated the measures outlined in the further information response can mitigate any potential overlooking from Block A, and that similar measures can be used where required for Block B;
- While the 5 storey Block A is considered appropriate at the Marlborough Road site frontage, there is concern regarding the scale of Block B and its impact when viewed from Marlborough Mews; that the block could appear visually incongruous behind Marlborough Mews; and could have an overbearing impact when viewed from the rear of houses on Marlborough Mews. Report considers the Block B height should be reduced by one storey.

Road Planning (dated 01/06/23)

- 3.2.2. In response to further information, report recommended a grant with conditions.

Environmental Health (dated 27/10/22)

- 3.2.3. Report raised concerns in the absence of further information and therefore recommended refusal. Report required all recommendations in the submitted Noise & Vibration Assessment to be implemented in full if permission is granted:

- In relation to vibration, the report stated the Noise & Vibration Assessment shows vibration levels significantly higher than levels likely to result occupant adverse comment in residential building as per BS6472-01. Report stated there are no engineering structural design proposals for the building to

mitigate against the levels of vibration encountered during the survey. Report recommended applicant submit such plans for review prior to a decision to safeguard residential amenity of future inhabitants;

- In relation to construction, the development would be classified as high risk and as such the measures outlined in the 'Air Quality Monitoring & Noise Control Units Good Practice Guidelines' adopted by Dublin City Council should be adhered to in relation to high-risk sites. A condition should be attached in this regard to be submitted to the planning authority for review.

Drainage (dated 09/11/22)

3.2.4. No objection subject to condition.

3.3. **Prescribed Bodies**

3.3.1. None received. I note below a submission received from Irish Rail.

3.4. **Third Party Observations**

3.4.1. Submissions from 16 no. observers were received by the planning authority during the course of the application, summarised as follows:

3.4.2. Local residents - Submissions from the following local residents were received: W. Greene, Michael Freeman and Kate McKenna, Brian Mac Namee, Eoghan McKenna, Rebecca Bury, Avril & Garret Flynn, Louise Kelly, Colum Murphy obo. The Murphy Family, Mary and Aileen Meehan, Ciaran and Lisa Browne, Anthony and Catherine Thuillier, David Burgoyne & Michelle Ní Longáin, and Caroline O'Beirne).

3.4.3. Cllr. Joe Costello - Observation stated support for Marlborough Road residents' observations. Highlighted issues regarding overdevelopment, residential amenity, heritage, character, housing mix, access, parking, archaeology, biodiversity, and consistency with the development plan.

3.4.4. Department of Defence - The Department of Defence made broadly the same points as their observation to the Board.

3.4.5. Irish Rail – Observation from Iarnród Éireann Infrastructure section is summarised as follows:

- Submission stated there are discrepancies between location map and layout plan railway boundary. Layout plan shows the boundary more accurately. A solid block boundary should be erected on the applicant side of the boundary. Submission required that no part of any building be constructed or overhang within 4m of the boundary on the applicant's side. Submission required no trees to be planted directly along the railway boundary;
- Required detailed design of foundations and other substructure elements to be approved by Irish Rail prior to construction. Required the development not undermine integrity of soil cutting (Irish Rail Ref. CT0001D) running along the western boundary of the development, noting the soil cutting is c.10m below the level of the applicant's property;
- Stated that development must take account of potential noise and vibration on sensitive receptors. Stated that residential units should be designed, orientated and located to limit impact of noise and vibration from railway traffic and maintenance. Recommended applicant incorporate best practice principles in the design using BS8233 'Guidance on Sound Insulation and Noise Reduction for Buildings'. Stated applicant must refer to local authority Noise Action Plan regarding development adjacent railway and where appropriate carry out a noise risk assessment to inform an acoustic design statement. Stated applicant must take responsibility for specifying necessary mitigation where noise thresholds are expected to be exceeded;
- Sought applicant engagement to agree details. Set out requirements for boundary maintenance, security of railway boundary during construction, preservation of railway mounds & ditches, management of discharges & surface water, lighting, and requirements for permissions and approvals from Irish Rail including regarding cranes or any crossing of railway property.

The submission stated the observation is made in the interests of safety in operation of the railway, and recommends the points are made condition of planning.

4.0 Planning History

4.1.1. Subject site:

Reg Ref. 4582/19: Planning permission refused by the City Council in 2020 at Marlborough Road and to the rear of properties on Marlborough Mews for 2 no. apartment blocks 5-storeys in height with a total of 40 no. dwelling units, associated site development works including site clearance works, new vehicular/pedestrian access off Marlborough Road, car parking spaces including spaces off Marlborough Road and Mews, communal open space area, cycle parking, bin storage, hard and soft landscaping and boundary treatments works. No appeal. The application was refused for 3 no. reasons, summarised as follows:

- 1. The quantum & quality of communal amenity space is unsatisfactory having regard to a lack of natural surveillance and peripheral location in the site;
- 2. The obscured glazing to all ground floor windows and majority of above ground floor windows to the east elevation to address overlooking and privacy issues is not appropriate for habitable rooms;
- 3. The poor elevational design and incongruous roofscape adjacent a Z2 conservation area and proximate the protected structures in McKee Barracks, coupled with the high loss of trees failed to respect and enhance its local context, would not integrate well in its surroundings, and would seriously injure the amenities of property in the vicinity.

4.1.2. Nearby sites – None recorded.

5.0 Policy Context

5.1. Development Plan

5.1.1. In the 2022-2028 City Development Plan the site is zoned 'Z1 Sustainable Residential Neighbourhoods' where the land-use zoning objective is *"To protect, provide and improve residential amenities"*.

Policies SC2 City's Character, Policy SC5 Urban Design and Architecture Principles, SC10 Urban Density, SC11 Compact Growth, SC19 High Quality Architecture, SC20 Urban Design and SC21 Architectural Design. Section 4.5.5 Urban Design and Architecture and Policy

SC14 Building Height Strategy, SC15 Building Height Uses, and SC17 Building Height

Policies SC22 Historical Architectural Character and QHSN12 Neighbourhood Development

Policies QHSN36 High Quality Apartment Development, QHSN37 Houses and Apartments, QHSN38 Housing and Apartment Mix

Table 2 Maximum Car Parking Standards for Various Land Uses

Policies SI22 Sustainable Drainage Systems and SI25 Surface Water Management

Section 15.4 Key Design Principles, including Sections 15.5.4 Height, 15.5.7 Materials and Finishes

Chapter 10 Green Infrastructure Strategy, including Policies GI2 Connectivity, GI14 Ecological / Wildlife Corridors, GI27 Addressing Public Open Space Deficits in Identified Areas, GI28 New Residential Development. Section 10.5.7 'Urban Forest' Policy GI40 Tree Planting – General, GI42 Tree Management, GI43 Hedgerows, GI44 Resilient Urban Forest. I note in particular Policy GI41 'Protect Existing Trees as Part of New Development'.

Objective GIO41 'Dublin City Tree Strategy 2016'. Section 3.3.1 of the Dublin Tree Strategy 2016-2022, 'Protection of Existing Trees'. Section '15.6.9 Trees and Hedgerows'

Sections 9.5.8 Noise Pollution and 15.9.16.3 Noise. Policies SI37 Noise Sensitive Development. In relation to noise, I note the Dublin Agglomeration Environmental Noise Action Plan 2018– 2023 and Dublin City Council Strategic Noise Maps. In this regard the adjacent railway line is not a major railway.

Chapter 11 Built Heritage & Archaeology. Policies BHA9 Conservation Areas, BHA12 Industrial, Military and Maritime, Canal-side and Rural Heritage, and BHA26 Archaeological Heritage, and Sections 11.5.3 Built Heritage Assets of the City, 11.5.5 Archaeological Heritage, 15.15 Built Heritage and Archaeology, 15.15.2 Built Heritage, and 15.15.2.2 Conservation Areas

Sections 15.18 Environment Management and 15.18.1 Construction Management

Appendix 3 Height Strategy. Appendix 5 Transport & Mobility Technical Requirements.

5.2. National guidelines

- 5.2.1. Sustainable Residential Development and Compact Settlement Guidelines 2024. In particular I note Specific Planning Policy Requirement 1 'Separation Distances' and SPPR 'Car Parking'.
- 5.2.2. Sustainable Urban Housing Design Standards for New Apartments 2020
- 5.2.3. Design Manual for Urban Roads and Streets 2019
- 5.2.4. Urban Development and Building Height Guidelines 2018
- 5.2.5. Architectural Heritage Protection Guidelines 2011
- 5.2.6. Urban Design Manual A Best Practice Guide 2009

5.3. Natural Heritage Designations

- 5.3.1. The South Dublin Bay and River Tolka Estuary SPA is c(4.4 to the east.

5.4. Environmental Impact Assessment

- 5.4.1. Having regard to the nature and scale of the proposed apartment development, its location in a serviced urban area, and to the criteria set out in Schedule 7 of the Planning & Development Regulations 2001, as amended, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can therefore be excluded at preliminary examination and a screening determination is not required (See Form 1 & 2 Appendix 1).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Three third-party appeals were received, summarised as follows:
- 6.1.2. Mary and Aileen Meehan of Marlborough Road:

- Biodiversity: Concerned about wildlife impacts. Sixty trees will be removed. Proposal contradicts DCC and government climate action and biodiversity strategies (ie. DCC Biodiversity Action Plan 2021, City Development Plan, Citizens Assembly on Climate Action and other sources). There is a strong argument for retaining more trees. States bat survey was prepared in 2020, is incomplete, and should be repeated. States numerous species have been seen on Marlborough Rd, including protected species. States the biodiversity report is contradictory of arboriculture report and bat survey. States the development will negatively impact bats, mammals and birds due to removal of vegetation / prey. DCC could enhance the site's biodiversity / ecology;
- Character: Proposal is not visually in keeping with and would tower above Marlborough Road properties and the historically & architecturally important McKee Barracks. Proposal would impact local views including of McKee Barracks and from St. David's Terrace;
- Construction impacts: Condition surveys of Marlborough Rd terrace is need. States residents are aware of and have experienced the low quality internal and external concrete walls and lathed ceilings, and that there is a good possibility there will be damage to the houses.

6.1.3. Ciaran Browne and Lisa Browne, and Anthony Thullier and Catherine Thullier, of Marlborough Road submitted a lengthy appeal summarised as follows:

- Proposal does not comply with development plan and fails to address reasons for refusal for similar proposal Ref. 4582/19:
 - Communal space: Space is at the periphery and lacks surveillance;
 - Overlooking: Has not been resolved from previous application. Height, scale and visual impact is similar to previous application;
 - Scale, height, orientation and proximity to Marlborough Road: Proposal is unsuitable and represents overdevelopment;
 - Design: Proposal fails to meet development plan design principles. Proposal does not have regard to or protect the character, scale, materials or streetscape of the historic area, including McKee Barracks conservation area and protected structures, or Marlborough Road

Victorian terrace. The detailing, building line, scale, height, massing and plot width are at odds with the area.

- Trees: The proposed level changes do not allow for any tree retention. Much of the new planting is adjacent the railway boundary. Removal of all vegetation does not have regard to the ecological value of the site;
- Application is premature and provides insufficient information. Impacts cannot be properly assessed. Application should be refused as follows:
 - Structural design: Application states no site investigation has taken place. The railway embankment has a history of landslips (Page 22/23 of Railway Accident Investigation Unit report, appeal Appendix B). Making the application ahead of foundation design creates a risk the proposal will require material alteration. Concern regarding railway embankment stability. More significant foundations may be required;
 - Vibration: The application states human adverse comment is probable. The environmental health officer stated there are no structural design proposals to mitigate the vibration levels surveyed and that the applicant should submit this prior to decision;
 - Marlborough Road terrace: Little contextual information of relationship to terrace on the northern side of Marlborough Road which is 20m away. There are discrepancies in the computer generated images;
 - Drainage: Soakaway test trenches are not accurate as they are based on soil that will be removed. Based on the engineering report the proposed drainage design likely will not work.
- Issues raised in observations were not dealt with by planning authority;
 - Height and density: The height and density, in particular Block A, materially contravenes development plan. Planning authority assessed the proposal against inappropriate height criteria. Proposal should be for two blocks of three storeys, or one block of four storeys. Proposal would be overbearing and have a detrimental visual impact. Proposal fails to address impact residential development on Marlborough Road;

- ⊖ Planning authority report: Report is flawed in concluding the density is appropriate, and does not take sufficient account of related impacts;
- ⊖ Biodiversity: Loss of trees means loss of biodiversity. A smaller development would allow more trees/biodiversity to be retained. Bat survey is inadequate and was undertaken at the wrong time. Phoenix Park is a bat hotspot;
- ⊖ Railway: Design does not comply with Irish Rail requirements. The balconies overhang the required set back, which could require material design changes;
- Construction: Structural surveys of properties on Marlborough Road should be conditioned. No truck waiting area on Marlborough Road is identified;
- Parking: The development will place pressure on local parking. A condition is required for future residents to not be allowed park on Marlborough Road;
- Open space: Proposal does not make a positive contribution to the area in terms of open space / public realm. There is no potential to provide public open space in the vicinity and as such a contribution in lieu is flawed;
- Appeal states that if permission is granted, Block A setback should be increased, structural surveys of Marlborough Road dwellings undertaken, vibration management plan prepared, height and number of blocks reduced, and the brick colour condition attached by the planning authority be retained;

The appeal includes a 'planning review and development appraisal report' of the site prepared for CIE, which indicated a development of 15 no. dwellings. Appeal states the proposal should be judged against the scale of development in that report;

The appeal includes a Railway Safety Commission Railway Accident Investigation Unit report. The report relates to the derailment of an empty train due to a collision with landslip debris outside Wicklow Station in 2009. The report refers to a separate incident described as 'Landslides between Cabra and the Phoenix Park tunnel on the 21st January and 4th February 2009' (Section 1.10.5). The report states the

immediate causes of that accident was saturation of the slopes as a result of the presence of water, and that underlying causes were identified as: the steep angle of the earthworks, the lack of drainage, the overgrowth of vegetation, the depositing of waste materials along the embankment and the high water table.

6.1.4. Michelle Ní Longáin & David Burgoyne, and Caroline O'Beirne, of Marlborough Rd:

The following points were made by Michelle Ní Longáin and David Burgoyne:

- Site notice: The notice was not clearly visible or erected on the stated date;
- Traffic: Proposal will detrimentally alter Marlborough Rd. Increased traffic will adversely affect amenity. Proposal will increase congestion at NCR;
- Character: Railway bridge makes a strong connection between the Barracks and streetscape. Proposal is not consistent with the architectural integrity and character of the area, highlighted by the submitted CGIs;
- Construction: Sets out details of houses on Marlborough Road. Concerned regarding the impact construction traffic / works will have. Internal and external walls are of low quality. Condition surveys should be undertaken;
- Public open space: Marlborough Rd. is not appropriate for public space. Refers to local anti-social behaviour. Refers to requirements of South Dublin County Council 'Guidelines for Designing out Anti-Social Behaviour';
- Dept. of Defence: Board should request further submissions in this regard;
- Green infrastructure: Proposal does not take account of development plan Green Infrastructure Strategy or DCC Greening Stoneybatter Strategy. Environmental significance of site is underplayed. Site is valuable for movement of species between woodlands;
- Habitats: Site is linked to Phoenix Park via the railway corridor. Site is a small woodland habitat under Article 10 Habitats Directive. Proposal is not compliant with development plan policy. Refers to species seen in the area.

The following points were made by Caroline O'Beirne:

- Height, scale and density: Development is excessive in height, scale and density. The reduction of 4 no. units is not sufficient;

- McKee Barracks: Overlooking of the Barracks is not addressed. The 22m rule should not apply. Personnel / equipment could be photographed;
- Biodiversity: Proposal is in breach of Habitat Directive, Dublin City Biodiversity Action Plan 2021-2025 and Dublin City Development Plan 2016-2022. The area has been idle for 140 years and is part of the area's green infrastructure. Residents see Red Foxes, badgers, birds and bees in the area. Badgers are protected under the Wildlife Act 1976 and Wildlife Amendment Act 2000. Dublin City Council is a signatory to All-Ireland Pollination Plan as part of the National Biodiversity Action Plan 2017-2021. Site is near the Tolka River Estuary SPA and North Dublin Bay SAC. Consideration should be given to the City Council's Tree Strategy and Biodiversity Action Plan. The 'Greening Stoneybatter' initiative should be taken into account. Proposal contravenes 17 no. development plan green infrastructure policies and objectives;
- Application errors: Identifies errors in the application. Photographs of Marlborough Road appear to be edited;
- Design, heritage & character: Proposal is architecturally inappropriate, does not respect Marlborough Rd Victorian buildings, destroys surrounding sense of place, and fails to integrate with the area's character. There are buildings on the NIAH in the area. There is a visual link with McKee Barracks;
- Height, density & scale: Proposal will severely injure Marlborough Rd low-rise Victorian homes. The height is excessive;
- Amenity: The landscaping will not compensate for green infrastructure loss. No protection of existing residents is given. Proposal will cause overshadowing, especially for Marlborough Rd. Proposal will not be socially inclusive. Proposal will injure the potential to open Marlborough Bridge;
- Waste: Bin storage should be moved into the site;
- Landscape: Layout does not promote interaction with existing community. Open space to the front is insufficient. Concerned with felling of street trees;
- Development plan: References a large number of development plan policies and objectives which the appeal states the proposal does not comply with;

- Traffic: Objects on grounds of traffic safety and amenity. Proposed access is unsafe. Access via Marlborough Mews is inappropriate and use by HGVs is unsafe. Congestion will worsen. Each unit should have a parking space;
- Infrastructure: Proposal does not deal sufficiently with ability of local infrastructure to deal with the development;
- Construction / soil removal: Archaeological survey is required prior to commencement. There is at least 11,000 cubic yards of soil to be excavated or 1,000 lorry trips. Construction should be via Marlborough Mews;

The appeal sets out 5 no. appendices relating to biodiversity, habitats, and trees, acoustics, and natural lighting. Appeal includes the abovementioned CIE report relating to development potential of the site.

6.2. Planning Authority Response

- 6.2.1. Response to appeal received 1st August 2023 requesting the Board uphold decision and attach specific conditions (ie. financial, social housing, and naming/numbering).

6.3. Observations

- 6.3.1. Department of Defence – An observation to the Board made the following main points in relation to the appeal:

- The development being 5 no. storeys in height and directly overlooking offices and buildings in McKee Barracks will have very concerning implications for security and operations at the barracks. The buildings to be affected are critical components of Military infrastructure, which could be compromised by such a development. The Department of Defence is not satisfied that the conditions attached effectively address such concerns.

6.4. Further Responses

- 6.4.1. A response from the applicant was received, summarised as follows:

- All three appeals fail to make a planning case as to why permission should be refused. The appeals fail to establish where the planning authority is wrong;

- The proposal complies with relevant policy, objectives and guidelines. The site is brownfield; is not green space; is inaccessible to the public; and is overgrown. Proposal is for a striking / contrasting development for the area;

Regarding the 'Browne & Thuillier' appeal:

- Overdevelopment: Proposal will differ from existing development in the area, as policy requires higher densities. Copying the existing pattern is not viable, practical or sustainable. Site coverage and plot ratio figures complied with policy requirements prior to changes made in response to further information;
- Premature / incomplete application: Claims of rail line slippages are unsubstantiated. The incidences referenced between Cabra and Phoenix Park Tunnel in 2009 are not registered on the RAIU's investigation database. The section / spur is not identified. Many of the slip causes identified do not relate to the site. There have been no events in 14 years. The application proposes no works to the rail embankment. Reprofilling the site ground levels will reduce the overburden pressing down on the rail embankment. Iarnrod Eireann stated no objection. Applicant is satisfied the Irish Rail submission, the application, and Conditions 13 and 14 address these matters;
- Marlborough Road terrace: The drawings submitted show the relationship to the terrace. Appeal argues that the issues raised in objections were not dealt with by the City Council, however this is at the Council's discretion;
- Basements: No basement is proposed, so no impact assessment is needed;
- Irish Rail: Proposed balconies can be cleaned without entering Irish Rail property. Condition 14 requires agreement with Irish Rail to determine exact location of site boundary before submitting DCC compliance. Appellant cannot know if changes will be required or if any changes would be material;
- Irish Rail 2017 development report: The report is based on redundant guidelines / policies, and has no statutory weight;

Regarding the 'Burgoyne et al' appeal:

- Design and form: Proposal is not similar to previous proposal on site. Marlborough Rd is not homogenous; the terrace is on one side only, with the southern side much less defined;

- House damage on Marlborough Road: Proposal has nothing to do with damage to Marlborough Road properties. Stating the proposal would damage properties is unsubstantiated, and ignores the Noise & Vibration Assessment;
- Department of Defence: Refutes idea security of McKee Barracks will be compromised. This was not an issue for application Ref. 4582/19. Department of Defence is unspecific and does not provide reasonable grounds to refuse permission. There have been innumerable applications granted surrounding the Barracks and security was not an issue. The Barracks is overlooked by houses on Blackhorse Avenue. The 72m separation distance is sufficient to mitigate overlooking / loss of privacy. The barrier of the railway line provides security. The Department did not appeal the decision;
- Green infrastructure: Site is not linked to the Phoenix Park due to Phoenix Park Tunnel. Appeal provides no evidence site is environmentally significant. Proposal would not compromise the rail embankment 'green corridor' function. Appellant point that the site should be retained intact for its own sake is not a strong or compelling reason to refuse permission. The site is not within the DCC 'Greening Stoneybatter Strategy' 2019 area;
- Soil: Appellant states 11,000 tonnes of soil will be removed from the site in over 1,000 lorry trips. This is factually incorrect; the submitted engineers report shows 3,500 cubic metres will be removed in 350 no. truck movements;
- Waste: Bin storage is located near the main entrance points of each block;
- Landscaping: The landscape plan promotes physical and visual interaction. Only one street tree is to be removed;
- Light: Comments regarding natural light / overshadowing are addressed in the submitted sunlight, daylight and shadow assessment report;
- Sewage: The planning authority engineering department was satisfied with sewage infrastructure. Irish Water accepted the existing sewerage system capacity. Surface water will be attenuated on-site with SUDS;
- Bats: Applicant contests the claim that the bat survey is obsolete. The report was prepared for application Ref. 4582/19 and resubmitted in October 2022

with the author's confirming it was still valid and did not require updating.
Survey was carried out in June 2020 and found no evidence of roosting bats;

- Trees: The arborist report provides reasoned justification for tree removal;
- Biodiversity: Refutes appellant comments regarding the biodiversity & habitat report. States the report is factual and prepared by qualified professionals;
- The site is a registered derelict site which is residentially zoned.

Regarding the 'Meehan' appeal:

- Duplicating the Marlborough Road properties would be a poor design for the site. The CGIs show the proposal will not be physically or visually excessive unless looked directly at from some Marlborough Rd dwellings. The scale, massing and height will be partially obscured by surrounding development.

7.0 **Assessment**

7.1. Having regard to the foregoing; having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal and the reports of the local authority; having inspected the site; and having regard to the relevant local, regional and national policies and guidance, I consider that the main substantive issues to be considered in this appeal are as follows:

- Land use,
- Trees, habitats and biodiversity
- Residential amenity
- Character, heritage and design
- Building height and density
- Noise and Vibration
- Access and parking
- Related matters raised in the course of the appeal.

Land use

- 7.2. The proposal is within a 'Z1 Sustainable Residential Neighbourhoods' land use zoning objective area in the City Development Plan 2022-2028. I am satisfied the proposed use is acceptable in principle.

Trees, habitats and biodiversity

Trees

- 7.3. Regarding tree removal, the submitted arboricultural assessment states there are 72 no. trees and one hedgerow on-site. The initial application proposed removal of 68 no. trees; in response to further information the development footprint was reduced which enabled 6 no. trees in total to be retained. This means c.92% of the 72 no. trees on site are to be removed.
- 7.4. The arboricultural assessment indicates there are no category 'A' trees on site, and the only category 'B' tree is to be retained. All bar one of the trees to be removed are category 'C', with one tree being category 'U'. The report states the trees are mainly semi- to early-mature and that the majority are in fair to good condition. The report states that individually the trees are of little value to the treescape of the area, but collectively they have some value and create a prominent belt of trees; based on this the report allocates a category of 'C2' to the tree group. The report notes that it appears the site was built up with infill soil and rubble. The report states the site is overgrown, has been unmanaged for a number of years, and is dominated by regenerating species (eg. Ash, Sycamore, Hawthorn, Elder, Goat Willow and Bramble). The report notes the crowns of many of the ash trees show signs of Ash Dieback which may lead to their decline or death in time. A total of 19 no. Ash trees are recorded on the site. The report states that category 'C' trees would be seen as having the potential to provide tree cover for the short to medium term. I also note the site is inaccessible to the public, with only a private pedestrian gate to the site.
- 7.5. Overall I consider the arboricultural report indicates the trees proposed to be removed are lower quality but in fair to good condition. The report concludes the trees should not be seen as a considerable constraint on the development of the lands, but also that where viable the trees should be retained.
- 7.6. The planning authority planner report stated that given the zoning, development is likely to necessitate the removal of some trees, however the report stated concern in

relation to the loss of almost all trees on the site. The report stated the majority of trees had the potential to reach B2 category. The first further information item issued by the planning authority sought a reduction in the footprint of Block B or the amalgamation of the blocks in order to allow for retention of more trees and the southern end of the site due to the extensive loss of trees proposed. In response the applicant reduced the footprint of Block B and reduced the loss of trees on site from 68 no. (c.94% loss) to 66 no. (c.92% loss).

- 7.7. No report from the planning authority Parks, Biodiversity & Landscape Services Division was received.
- 7.8. Regarding development plan policy, there are a number of provisions in the plan relating to tree removal. These provisions variously seek to provide for more tree canopy cover; prevent the loss of mature trees; retain existing trees where feasible; protect existing trees as part of new development; deliver and manage a resilient urban forest and prioritise location with a low canopy cover; protect and enhance natural features of sites including trees; support the retention of trees where possible; and seek to protect existing trees when granting planning permission for development. Other sections of the development plan refer to the role of trees in urban greening, ecosystem services, green infrastructure, and the climate change adaptation and mitigation benefits of trees.
- 7.9. I consider Policy GI41 and Section 15.6.9 of the development plan are particularly relevant. Policy GI41 states *“To protect trees as part of new development, particularly those that are of visual, biodiversity or amenity quality and significance, and that there will be a presumption in favour of retaining and safeguarding trees that make a valuable contribution to the environment”*. Section 15.6.9 states the City Council *“will seek to protect existing trees and hedgerows when granting planning permission for developments and will seek to ensure maximum retention, preservation and management of important trees, groups of trees, and hedges as set out in Section 10.5.7 of the plan”*. [Section 10.5.7 is entitled ‘Urban Forest’]. Section 15.5.9 sets out criteria for assessing planning applications where there are significant individual trees or groups / lines of trees in order to inform decisions to protect and integrate trees into a scheme or to permit their removal. Based on the available information on the file, below I assess the trees on site under each of the criteria:

- Habitat/ecological value of the trees and their condition: I consider the value of the trees in this regard to be low, and their physical condition fair to good.
- Uniqueness/rarity of species: I consider the species to be common regenerating species.
- Contribution to any historical setting/ conservation area: I consider that whilst the tree growth partially obscures the view of McKee Barracks from Marlborough Road, the trees do not form any intended part of the historic setting of any heritage structure or conservation area, and overall I would not consider the trees to make a positive contribution in this regard.
- Significance of the trees in framing or defining views: As above, I consider the trees partially obscure the view of McKee Barracks from Marlborough Road, but I do not consider the trees frame or define any such view or make a positive contribution in this regard.
- Visual and amenity contribution to streetscape: I consider the trees on-site to have limited prominence, are located generally to the rear of development and along the railway tracks, and have a low visual and amenity contribution. However I consider the 2 no. street trees outside the site to have a positive visual and amenity contribution to the streetscape.

7.10. Having regard to the foregoing, I consider application of these development plan criteria supports the case for the proposed tree removal. I note there are no site-specific tree protection policy objectives or tree preservation orders for the site.

7.11. The previous refusal on the site by the planning authority (Ref. 4582/19) coupled the impact of the design and roofscape adjacent a conservation area and proximate to a group of protected structures with the high loss of existing trees both on-site and off-site, with the refusal reason stating this would result in a development that failed to respect and enhance its local context, and would not be well integrated with its surroundings. In that case only 1 no. tree was proposed to be retained on the site. I consider that in terms of trees the reason given was the visual impact of tree removal rather than the tree removal itself.

7.12. Regarding mitigation, a total of 42 no. trees are proposed to be planted on the site as part of the development. These trees would be miniature beech, birch and oak trees

set within hard and soft landscaping. Whilst the number of trees to be significantly less and a materially different proposition to the more naturally occurring growth currently on the site, I consider the scale of tree planting is significant.

- 7.13. Regarding tree location and type, whilst there are trees throughout the site, they are primarily clustered in the north, generally in the location of the proposed Block A, and also along the western boundary. Approximately one-third of the trees to be removed are Ash (35% of total to be removed). These trees are mixed amongst the other tree species on site. Ash Dieback has been identified on some of these trees however their removal has not been recommended in the arboricultural report.
- 7.14. In summary, whilst the development plan seeks to protect trees, Policy GI41 and Section 15.6.9 provide criteria to evaluate and enable tree removal proposals, including tree groups. Having regard to these criteria I am satisfied the proposed extent of tree removal, whilst significant and forming a very high number and proportion of trees on site, is consistent with development plan policy as drafted. In this regard, the site is zoned Z1 where residential development is acceptable in principle, and whilst the development is within the density range set out in policy and guidelines, the proposed site coverage and plot ratio figures are already below development plan indicative requirements in these regards. I also note the development plan Core Strategy promotes compact growth, the better use of land within built up areas close to public transport and the city centre for development opportunities. Having regard to the foregoing, on balance I am satisfied the proposal is consistent with relevant development plan provisions in this regard.
- 7.15. Regarding the hedge on the site, there is a section of hedge measuring c.20m along the eastern boundary of the site adjoining the Marlborough Court apartments open space. This is a relatively short section of hedge with minimal habitat value. I am satisfied its removal is acceptable.

Habits and biodiversity

- 7.16. I note the submissions received in this regard, and the reports from the applicant including the Biodiversity & Habitat Report, Bat Survey, and Arboricultural Assessment. No report from the planning authority biodiversity officer was received.
- 7.17. The Biodiversity & Habitat Report incorporated a field survey and mapping of the site. It states the site is of low biological and ecological importance. It states the site

does not have a substantive ecological value to be of importance or critical to any particular species or taxonomic group to be worthy of protecting or preservation in its own right.

- 7.18. The Bat Survey stated there were no confirmed roosts present, however that the trees to be removed did have high potential to support roosting bats, and that care must be taken to ensure their protection during tree felling. It also states that 3 no. species of bats were recorded using the site for foraging and that these could be negatively impacted through loss of vegetation and invertebrate prey species. Mitigation measures were included.
- 7.19. Regarding trees, the report stated the proposed extent of tree removal will not result in an unacceptable or detrimental impact to local biodiversity. However, it goes on to state that such a transformation should be ameliorated in some form in order to preserve/protect/encourage as much biodiversity value as may be gained through innovative design, landscaping and layout. The report sets out potential mitigation measures, however I note the report makes no reference to the tree planting proposed as part of the development.
- 7.20. The site appears to comprise made ground colonised by tree, hedge, scrub and other growth. The only species recorded on the site by the Biodiversity & Habitat report were common, non-protected bird species, although the report states that the site's condition and vegetation have the potential to provide nesting/borrowing and foraging opportunities for common and widespread species. The report cross-refers to the Bat Survey findings. The submitted Bat Survey indicated the site did not support any roosting bats but that three species were using the site for foraging purposes. I note again the local biodiversity referenced in the submitted appeals.
- 7.21. I also note that areas of similar growth extend to the north and south along the railway line. As such the proposed development would not break the wider network of tree, scrub and hedge growth, and that connectivity outside the site for common bird and mammal species would be maintained.
- 7.22. Overall I am satisfied the site is of relatively low value and low sensitivity in relation to habitats and biodiversity, and that its development in accordance with the zoning objective should not be inhibited on this basis. I consider the type of trees, hedgerows, scrub and grasses in this area to be reasonably common and not of

particular sensitivity or of high habitat value. The type of habitat does not benefit from specific protection in either policy or legislation at a local, national or European level. I note the submitted reports state that neither the habitats, trees or species on site are of particularly high value or require their retention. I have set out my considerations in relation to tree loss specifically above. Having regard to the information on file and to the nature of the site, I am satisfied the development impacts in relation to habitats and biodiversity do not warrant refusal of the proposed development, including in relation to bats, subject to conditions.

Residential amenity

Overlooking

- 7.23. Regarding overlooking, one appeal states the development does not satisfactorily resolve previous reasons for refusal on the site in this regard (Reg Ref. 4582/19).
- 7.24. Having regard to the proposed scale, layout and distances relative to dwellings on Marlborough Road I do not consider any significant degree of overlooking would arise in this regard. Whilst the proposal would be 5 storeys with balconies along the Marlborough Road elevation, it would be c.30m from the front elevations of the existing dwellings. As such I am satisfied the proposal would not give rise to a material degree of overlooking of those dwellings.
- 7.25. I consider the main issues in this regard relate to the relationship with the Marlborough Court apartments and dwelling along Marlborough Mews, to the east.
- 7.26. Regarding Marlborough Court, the proposed layout has sought to minimise overlooking by locating internal circulation space along the eastern elevation and by the use of narrow secondary windows for kitchen-diner spaces at each floor. However, 5 no. proposed bedroom windows in the western elevation of Block A would be orientated directly towards a number of apartments in Marlborough Court at a distance of c.12.8m. In response, the applicant proposes louvred screens across each of the above-ground floor bedroom windows (4 no. bedrooms).
- 7.27. There are 9 no. habitable room windows within the western elevation of the Marlborough Court apartments orientated toward Block A at this point. The party boundary at this point comprises a large block wall (c.2.5 to 3m in height) which provides screening between existing and proposed ground floor windows.

- 7.28. Since the planning authority planner report was drafted the Compact Settlement Guidelines have been published. SPPR1 of the Guidelines states that separation distances below 16m may be considered acceptable in circumstances 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.
- 7.29. I am satisfied the proposed distance coupled with the louvred screens would provide for sufficient privacy and minimisation of overlooking at this point, whilst also providing an appropriate level of internal amenity for future occupants, subject to Condition 3 parts (c) and (d) of the planning authority decision.
- 7.30. The previous apartment development proposed on this site (Ref. 4582/19) was refused on grounds that the proposed obscured glazing to habitable room windows in the eastern elevation which were proposed to address overlooking and privacy issues were not deemed appropriate and did not provide adequate residential amenity for future occupants. In the subject case the applicant proposes a different approach which I am satisfied strikes a more appropriate balance between protecting privacy and avoiding overlooking, subject to amended conditions in this regard.
- 7.31. Regarding Marlborough Mews, the elevation of Block B would be angled away from dwellings along Marlborough Mews. No. 3 Marlborough Mews would be the closest dwelling to Block B. The closest proposed windows to the rear elevation of No. 3 Marlborough Mews would be c.10m and would comprise narrow secondary windows (slit windows) for kitchen-diner spaces at each floor. Balconies at the southern end of Block B would also be c.10m from No. 3. The next closest above ground floor windows (No. 4 Marlborough Mews) would be c.20m from windows in Block B. Overall I consider that revisions are required to Condition 3 parts (c) and (d) of the planning authority decision, to expand its provisions and ensure no overlooking of dwellings on Marlborough Mews, in particular No. 3 Marlborough Mews.
- 7.32. Regarding natural lighting, I have reviewed the submitted Sunlight, Daylight and Shadow Assessment. The main impacts shown from the development would be on 1 no. rear window of a dwelling along Marlborough Mews and 1 no. side window in the western elevation of Marlborough Court. These windows would continue to receive natural light but at a reduced level (that is, c.66 and c.56% of the existing level

respectively). No significant detrimental impact in terms of sunlight to neighbouring private amenity spaces is shown. I have had regard to the provisions of the development plan and Compact Settlement Guidelines in this regard. Having regard to the assessment findings and the extent of impacts envisaged; to the form, layout, orientation and relative positions of existing and proposed development; and to the nature of existing tree growth and ground levels in the area, I am satisfied the overall impacts in this regard are acceptable.

Condition 3

- 7.33. Condition 3 part (a) of the planning authority decision requires the omission of one storey from Block B in the interests of residential and visual amenities and to ensure no overbearance of dwellings along Marlborough Mews. At its closest, Block B would measure c.15m in height and would be c.8.5m from the rear elevation of No. 3 Marlborough Mews. Whilst angled away from Marlborough Mews, I consider that Block B would have a significant degree of overbearance of the rear of dwellings along Marlborough Mews, in particular No. 3 Marlborough Mews. A c.2m high block wall would remain between the two buildings. Having regard to the foregoing, and to the proximity, scale and orientation of Block B to the rear of dwellings along Marlborough Mews, in particular to No. 3 Marlborough Mews, I am satisfied this condition is necessary and reasonable.

Amenity space

- 7.34. Regarding communal amenity space, one appeal states that the previous refusal reason in this regard has not been fully resolved. The previous application on the site was refused on grounds of the quantum and quality of useable communal amenity space, its lack of natural surveillance, and its peripheral location within the site.
- 7.35. The subject proposal would provide c.650sqm external communal amenity space split between two spaces. One communal amenity space is at first floor between Blocks A and B, with a second space in the south of the site adjacent Block B. I consider the proposal as revised at further information stage meets the required quantitative, qualitative and locational requirements in this regard, including being appropriately located and passively surveilled.
- 7.36. Regarding public open space, a third amenity space measuring c.155sqm is proposed to the front of the site between Block A and Marlborough Road. The

applicant proposes this space as public open space. The development plan requires a minimum of 10% of the site area to be public open space, which here equates to c.280sqm. Appeal comments in this regard state that insufficient public open space is proposed, particularly to the front of the development. Another appeal states public open space should not be provided adjacent Marlborough Road. The planning authority planner report stated that a contribution to account for the shortfall in public open space provision may be appropriate. I concur with the planning authority that in line with Policy GI26 of the development plan a contribution in lieu of the shortfall (125sqm) is appropriate in this instance. I also concur that this space adjacent Marlborough Road would not be wholly appropriate as public open space on account of its proximity to the apartments and would be more appropriate as a communal amenity space. I note Condition 7 attached to the planning authority decision in this regard. I consider that a revised condition in this regard is required.

- 7.37. Regarding private amenity space, I consider the proposed provision meets national and local requirements. I note Irish Rail state their requirement that no part of the building including cantilevered balconies is to be within 4m of the railway boundary. They state this is to allow the applicant to maintain the proposed buildings without the need to enter Irish Rail property. In response the planning authority attached Condition 14(n). For clarity, the submitted drawings show no part of the proposed blocks or their respective balconies adjoining or overhanging the boundary. The closest elements of the proposed development to the railway boundary are 15 no. balconies on the western elevations of Blocks A and B which appear to extend to c.2.4m from the indicated boundary. In response to appeal the applicant states the exact location of the boundary is to be determined in conjunction with Irish Rail, and that changes to the design will be undertaken and amendment planning applications made if required. I am satisfied that should such changes to the balconies be required this could be achieved whilst maintaining adherence to local and national requirements. I also consider that the setback shown is sufficient for maintenance of the proposed blocks and balconies to be undertaken from within the proposed development. As such I do not consider there is a planning basis for the attachment of conditions requiring changes to the development in this regard.

Character, heritage and design

- 7.38. Two appeals raise the proposal's impact on the character and heritage of the area, especially McKee Barracks and Marlborough Road. One appeal states the proposal does not resolve refusal reason 3 of the previous refusal on site (Ref. 4582/19); it related to the previous elevation and roofscape design not meeting the high-quality urban design standards required in a Z1 area, directly adjacent a Z2 conservation area, and proximate McKee Barracks protected structures.
- 7.39. The submitted planning statement provides commentary on the proposed design, form, scale and layout, however I consider that minimal consideration of the architecture of the area, including McKee Barracks and Marlborough Road, is clearly set out in the submitted documentation. I also note limited 3D visualisations are submitted, and no drawing of the western contiguous elevation to face McKee Barracks is submitted.
- 7.40. Regarding context, the site is not in or adjoining an Architectural Conservation Area, lands zoned Z2 'Residential Neighbourhoods (Conservation Areas)', or any other conservation area identified in the development plan. There are no protected structures or National Inventory of Architectural Heritage (NIAH) structures on or adjoining the site. For completeness I note a small portion of the site abuts a dwelling located on lands zoned 'Z2 Residential Neighbourhoods (Conservation Areas).
- 7.41. McKee Barracks is c.40m to the west, across the railway corridor. It is included within a development plan conservation area (development plan section 11.5.3 and Policy BHA9 'red hatch' or 'red line' conservation areas) and incorporates a number of protected structures located in the north and central areas of the Barracks complex. The closest McKee Barracks protected structure is c.125m west of the site.
- 7.42. I note there are two structures on the NIAH near the subject site; Marlborough Bridge is a stone railway bridge c.10m to the north-west, and 'Carndonagh' is a dwelling on Marlborough Road, c.40m to the east.
- 7.43. Much of the surrounding area was developed in the Victorian period, most notably McKee Barracks, Marlborough Road, and Marlborough Bridge, with the NCR laid out prior to this. Along this end of Marlborough Road, the terrace of dwellings on the northern side and Carndonagh House on the southern side, date from this period. As noted above, originally Marlborough Road was connected to McKee Barracks via

Marlborough Bridge but the bridge is now closed-off and disused. As such there is a strong Victorian-era character and heritage in the area in terms of design, form, and layout, as well as the use of red brick and associated Victorian-era materials.

- 7.44. The immediate area around the site has also seen significant modern additions, particularly Marlborough Court, which is a modern apartment block adjacent the site, as well as buildings along Marlborough Mews which are primarily a mix of modern dwellings and related structures.
- 7.45. Regarding visual impact, having reviewed the available information, I consider there would be limited visibility of the development from along the NCR. There would be momentary visibility of the development when crossing the St. David's Terrace railway bridge to the north, but from that perspective the western elevations of the two blocks would be prominent overlooking the railway. The development would be most visible from the western end of Marlborough Road; the northern elevation of Block A would be set back from the roadside with the 4th and 5th floor visible above Marlborough Court. The remainder of the elevation would become more visible as one progresses toward the cul de sac at the end of Marlborough Road, which I consider contributes appropriately to the legibility of the area.
- 7.46. Overall, I do not consider the proposal would be particularly prominent in the wider area. I do not consider, as appellants state, that the proposal would dominate the skyline, landscape or roofline, or become the focal point of the area. I consider the site is generally to the rear of residential development, with minimal visibility from the wider public realm, and the majority of development in the area is orientated away from the railway line. I also note that there would be limited visibility of the site from the train which runs at a much lower level to the prevailing ground level. The development would be more prominent from specific neighbouring properties including parts of McKee Barracks, the rear of some dwellings on Marlborough Mews, dwellings at the western end of Marlborough Road, and from St. David's Terrace bridge to the north.
- 7.47. A number of appellants raised the visual impact of the proposal in relation to the view of McKee Barracks from Marlborough Road. I consider that whilst the northern end of Block A would be clearly visible in the view toward the Barracks from Marlborough Road, it is to the left of the primary visual line along Marlborough Road. I also

consider this view is already disrupted by the tree growth within and outside the site. In addition, whilst a significant design relationship remains between Marlborough Road, Marlborough Bridge and McKee Barracks, I consider the physical and visual connection between each has already been significantly disrupted. This is primarily on account of the fencing-off of Marlborough Bridge, and historical alterations to close the perimeter of McKee Barracks, as well as the existing tree growth on the subject site. In addition, due to the layout of the area and the topography of the site there is no significant visual connection across the site from the east (ie. the NCR or Marlborough Mews) toward McKee Barracks.

- 7.48. Regarding form and layout, I consider the proposed layout of 2 no. aligned blocks is appropriate having regard to the elongated shape of the site. The scale of the blocks references the larger blocks opposite within McKee Barracks; the longer Block A and shorter Block B in broad terms mirror the two differ-sized 3- and 3.5-storey barracks buildings opposite in both scale and alignment. The proposal is also comparable in scale to modern blocks along the railway to the south (Park Lodge and the former Forensic Science Ireland building) and north (Quarry Road and Hamilton Gardens), whilst remaining subordinate in height and scale to the McKee Barracks inner buildings. I also consider that a step-up in height at this corner location along the adjacent railway cutting is a reasonable urban design response.
- 7.49. I consider the proposal is also reasonably successful in transitioning downward the scale and form of Block A as it relates to development on Marlborough Road. The northern extent of Block A has been set back to broadly follow the alignment of Marlborough Court. The 5th floor has been further set back. This minimises the visual impact and sense of scale along Marlborough Road. I also note that at this end of Marlborough Road, the southern side already comprises larger individual buildings (ie. Marlborough Court and Carndonough House) with the strong rhythm, form, scale and alignment of the terrace on Marlborough Road limited to the northern side only; in this regard the proposed block more closely follows the form, scale and alignment established by Carndonagh House and Marlborough Court, whilst also reflecting the scale and height of buildings in McKee Barracks. Overall I am satisfied the proposed scale and form is reasonably successful at resolving the varying form and scale of buildings around the site, including along Marlborough Road and McKee Barracks, whilst also providing an appropriate sense of enclosure along Marlborough Road.

- 7.50. In relation to design, I note the previous reasons for refusal on the site. The previous proposal was closer in style, design and treatment to the existing Marlborough Court block, but was refused by the planning authority. I consider the subject design is significantly different to that previously proposed; it is contemporary and not dissimilar to other modern blocks further north and south, including in terms of elevations and roof form (ie. Quarry Road to the north, and Park Lodge to the south). Whilst I consider the design overall responds to its context, the finishes are somewhat generic and do little to reference the underlying Victorian-era and red-brick development in the area. I am satisfied the proposed design is of a sufficient quality to be consistent with policy, subject to improvements in relation to materials. In response to further information the applicant suggested a red brick finish to better complement the surrounding area. I consider this should be agreed by condition.
- 7.51. On balance, I consider the proposal would not have an unacceptable detrimental impact on the heritage and character of the area for the reasons set out above. This includes the adjacent Marlborough Bridge; buildings on Marlborough Road including Carndonagh House; and McKee Barracks, including the protected structures therein and the conservation area of which it forms parts. I consider the proposal broadly complies with the relevant policies and standards, and whilst the blocks would be visible, I do not consider the development would have an unacceptable detrimental impact on the amenities of the area. As such I am satisfied the proposal resolves the previous reasons for refusal on the site in this regard, and that the merits of the proposal in terms of urban design, form, scale and layout are sufficient to warrant permission, subject to condition.

Building height and density

Height

- 7.52. I have assessed the development against the requirements of the development plan, including Section 14.6 Transitional Zone Areas, Policy SC16 Building Height Locations, Policy SC17 Building Height, and Appendix 3 of the development plan.
- 7.53. I note the applicant and appellants' comments in this regard. The planning application sets out considerations of the proposed height, however minimal assessment of the proposal against the building height provisions of the then development plan or of the Building Height Guidelines was provided.

- 7.54. In relation to building height in the area, whilst heights vary, I would characterise the prevailing height as 2- to 3-storeys, although there are 3.5-storey structures and a 4-storey structure nearby. Immediately north, the prevailing height is 2-storeys, with some 3-storey structures further north. Immediately east and south there are 2- and 3-storey structures, with a similar mix further east. Across the railway to the west, the prevailing building heights are 3- to 4-storeys.
- 7.55. In the wider area I note a number of taller, modern apartment buildings also overlooking the railway line. These include the 5 - 6 storey Park Lodge apartments c.160m to the south; the 5 - 8 storey Hamilton Gardens apartments c.790m to the north; and the 4 - 5 storey Quarry Road apartments c.860m to the north.
- 7.56. The development plan states that the Building Height Guidelines note that general building heights of at least three to four storeys, coupled with appropriate density in locations outside what is defined as city centre, and which would include suburban areas, must be supported in principle at development plan level. The plan also states that within the canal ring it would be appropriate to support the consideration of building heights of at least 6 storeys at street level as the default objective, subject to keeping open the scope to consider even greater building heights. It states that in considering locations for greater height and density, all schemes must have regard to the local prevailing context within which they are situated. It states that this is particularly important in the lower scaled areas of the city where broader consideration must be given to potential impacts such as overshadowing and overlooking, as well as the visual, functional, environmental and cumulative impacts of increased building height.
- 7.57. As such, I consider the proposed height of 5 storeys is in principle acceptable.

Dublin City Development Plan, including Appendix 3:

- 7.58. Development plan Policy SC16 recognises the predominantly low-rise character of Dublin City whilst also recognising the potential and need for increased height in appropriate locations including locations as identified in development plan Appendix 3.
- 7.59. Appendix 3 states that as a general rule, buildings of between 5 and 8 storeys, including family apartments and duplexes are promoted in the key areas identified. It states that in relation to the 'City Centre and within the Canal Ring (inner suburbs)', a

default position of 6 storeys will be promoted within the canal ring subject to site specific characteristics, heritage/environmental considerations, and social considerations in respect of sustaining existing inner city residential communities. Appendix 3 also states, in relation to the Building Height Guidelines, that the guidance states that within the canal ring in Dublin, it would be appropriate to support the consideration of building heights of at least 6 storeys at street level as the default objective, subject to keeping open the scope to consider even greater building heights by the application of certain criteria.

- 7.60. Based on the foregoing, I consider the development plan recognises the need for increased height in locations such the subject site, and within the subject area promotes building heights at or in excess of that proposed, provided proposals provide reasonable protection of, amongst other things, existing amenities and the character of the area, as well consideration of impacts such as overshadowing, overlooking, visual and cumulative impacts, site specific characteristics, heritage/environmental considerations, and social considerations in respect of sustaining existing inner city residential communities.
- 7.61. Section 15.5.4 of the plan states that Appendix 3 identifies the height strategy for the city and the criteria in which all higher buildings should be assessed. Appendix 3 states the performance criteria to be used in assessing urban schemes of enhanced density and scale are set out in Table 3 of Appendix 3. The table sets out 7 no. objectives and 30 no. performance criteria; I have reviewed the proposal against each criterion and I consider that it supports the objectives and meets the performance criteria as stated, and would contribute positively to the formation of a sustainable urban neighbourhood.
- 7.62. Overall, having regard to the provisions of the development plan, including Policy SC16 and Appendix 3, I consider the proposal to be within the height range stated by the development plan for the area within the canals. Having regard to the local prevailing context; to amenity, visual, functional, environmental and cumulative impacts; as well as to heritage, environmental, and social considerations in respect of sustaining existing inner city residential communities, I am satisfied the proposal provides for the reasonable protection of existing amenities and environmental sensitivities, of residential amenity, and of the established character of the area.

7.63. In relation to the Building Height Guidelines, and taking account of the wider strategic and national policy parameters set out in the National Planning Framework and the Guidelines, I consider the proposed height, form and scale is acceptable for the reasons set out above, and I consider the proposal is generally consistent with the provisions of the Building Height Guidelines, including SPPR 3.

Density

7.64. Having regard to the provisions of the Compact Settlement Guidelines 2024, I would characterise the area as an accessible location and either an Urban Neighbourhood or Suburban/Urban Extension. As such, the proposed density of c.136 dwellings per hectare in this area is consistent in principle with relevant policy and guidelines.

7.65. Having regard to the development plan, the proposed density is within the net density range for the Canal Belt (Table 1, Appendix 3). I note development plan Appendix 3 states the density of a proposed development should respect the existing character, context and urban form of the area, and seek to protect existing residential amenity. I consider the proposal achieves this, subject to conditions.

7.66. I estimate the proposed plot ratio is c.1:0.9 and the proposed site coverage is c.32%. These figures are below the indicative ranges outlined in the development plan (Appendix 3, Table 2 '*Indicative Plot Ratio and Site Coverage*'). Having regard to the proposed density, these lower plot ratio and site coverage figures are consistent with a taller form of the development. Whilst these figures are relatively low, I am satisfied the density, height, form, layout and standard of development is acceptable.

Noise and Vibration

7.67. Regarding noise, I have reviewed the submitted Noise & Vibration Impact Assessment. Noise and vibration surveys were undertaken at the site. The main noise source affecting the site is the railway. The report takes into account British Standard BS8233 Guidance on Sound Insulation & Noise Reduction for Buildings, in line with planning authority Condition 14(q). The report sets out façade design and construction recommendations to achieve internal noise levels in line with BS8233 and achieve satisfactory levels of residential amenity for future occupants. The report states these are to be achieved by regular façade structural elements and double glazing. I note Conditions 11, 14(q) and 16 of the planning authority decision in relation to noise. I am satisfied these details can be resolved by condition.

- 7.68. Regarding vibration, the Noise & Vibration Impact Assessment states vibration surveys were undertaken in compliance with British Standard BS6472-01 and ISO 4866:2010. The report utilises 'vibration dose value' to measure vibration during the night and day, and to estimate the likelihood of 'adverse comment' from occupants of the proposed development. The results indicate that the highest measured dose for the site fell, broadly speaking, mid-way within the range for 'probable human adverse comment' during both day and night. The report recommended that a further detailed vibration assessment be carried out during the design stage to identify mitigation measures necessary to appropriately minimise the vibration impact on the development. No comment as to the potential nature or scope of mitigation was set out in the report.
- 7.69. I note the report from the planning authority Environmental Health officer. In the absence of further information, and in the interests of safeguarding the residential amenity of future inhabitants of the development, the report recommended refusal of permission. The report also recommended conditions for the agreement of the Environmental Health Officer in the event that permission is granted.
- 7.70. I note the points made by the appellants in this regard. Minimal additional points in these regards were made in the applicant's response to appeal.
- 7.71. The development plan focuses on vibration arising from construction impacts, with Section 15.9.16.3 'Noise' stating only that minimising disruption from noise in dwellings also requires utilisation of measures to reduce vibration. There does not appear to be any clear standard regarding vibration impacts in residential development within local or national planning policies or guidelines. Therefore I consider the British Standard referenced in the Noise & Vibration Impact Assessment submitted by the applicant is a reasonable benchmark in this case.
- 7.72. The railway tracks are in a cutting c.9-10m below the development. The development would be c.20m from the tracks. I note there are a significant number of both older and modern dwellings in the area in comparable proximity to the tracks.
- 7.73. Appendix B of the submitted noise and vibration report indicates the upper band threshold (that is, where adverse comment from occupants is probable) would be exceeded at a handful of times during the day, and that the mid-range (adverse comment possible) would be exceeded throughout the day. I note the number of

vibration doses during the night (ie. 07:00-23:00) was c.1 to 2 events (that is, passing trains), that these were just before 00:00 and 07:00, and were in the band where adverse comment is probable.

- 7.74. The identified impacts are below what would be expected to cause damage to property, but I consider they are within the range of what would amount to nuisance. I would characterise the highest measured vibration dose values shown for both the day and night periods as significant, and frequent through the day and into the night. I consider that without appropriate mitigation the nature of the likely nuisance could have a significant detrimental impact on residential amenity.
- 7.75. Vibration mitigation can in principle be incorporated into building design (for example by isolation of structural elements, soil design, and other on-site vibration mitigation systems) and these may in principle be dealt with by condition within the proposed building envelope. Again, the submitted vibration assessment makes no comment as to the potential nature or scope of mitigation, or the ability of mitigation within the proposed building design to reduce the envisaged impacts.
- 7.76. In summary, I note the development plan indicates only that vibration should be reduced, and that there does not appear to be any clear standard for vibration in residential development within local or national planning policies and guidelines. The site is zoned for residential development adjacent a railway line, and there is significant older and modern residential development along the line. I am not satisfied that issues of vibration have been fully resolved in the planning authority assessment, however based on the foregoing, I do not consider refusal of the proposal on these grounds is warranted, subject to the attachment of revised conditions in this regard.
- 7.77. Conditions 11, 14(q) and 16 of the planning authority decision relate to vibration. Condition 11 relates to construction stage vibration only. I consider there is a degree of overlap between Conditions 14(q) and 16. In addition I do not consider the conditions as drafted are sufficiently specific as to what is required of the development in terms of vibration, and as such I consider revised conditions are required in these regards.

Access and parking

Access

- 7.78. Access to the development is to be provided by an access from Marlborough Road. Construction of the access entails removal of a street tree. The vehicle parking and access on Marlborough Mews proposed as part of the application is now omitted. Marlborough Road is a cul de sac which connects to the NCR at an uncontrolled junction. Bus services operating at less than every 10 mins are available a short walk away on the NCR.
- 7.79. I have reviewed the applicant's 'Design Manual for Urban Roads and Streets Consistency Statement', as well as the site layout swept path analysis submitted in response to further information. I have also reviewed the vehicle and cycle parking provision proposed, and conditions attached by the planning authority in this regard.
- 7.80. In response to further information the planning authority Transportation Planning Division report recommended a grant of permission with conditions. I note the recommended conditions relating to construction management and agreement with the planning authority Roads Maintenance Division and Traffic Advisory Group.
- 7.81. Overall I am satisfied the proposal is acceptable in this regard, including in relation to the proposed access design, parking layout, and increase in traffic movements along Marlborough Road. The revised proposal demonstrates sufficient width for vehicles, including emergency and service vehicles entering and egressing the site simultaneously. I do not consider the single access proposed to serve a development with 14 no. parking spaces is inappropriate, and is unlikely to be blocked to emergency vehicles. Having regard to the width and condition of Marlborough Road I consider it can comfortably accommodate the additional traffic proposed. I consider the omission of access via Marlborough Mews is preferable having regard to its narrow nature, it being a cul de sac, the multiple accesses on both sides, and uncontrolled parking along its length. Considering the number of parking spaces proposed, the location of the development, and the available public transport facilities in the area, I do not consider the proposal will have a significant detrimental impact on the safety or operation of the local road network.

Parking

- 7.82. Regarding parking provision more specifically, I have reviewed the submitted Car Parking Strategy and Mobility Management Plan, Car Parking Management Plan, and Planning Statement.

- 7.83. Fourteen spaces for 34 no. units are proposed (0.41 spaces per dwelling). I note the provision of cycle parking and connections to walking facilities, nearby bus services and partial cycling infrastructure along the NCR.
- 7.84. I have reviewed the provisions of the current development plan (2022-2028) in this regard, including Policy SMT27 which seeks to provide for sustainable levels of parking to promote city centre living. The site is in parking standards Map J Zone 2. Development plan Appendix 5 Table 2 'Maximum Car Parking Standards for Various Uses' indicates a maximum car parking standard of 1 space per dwelling for apartments. The development plan states that a relaxation of maximum standard will be considered in this zone for a site within a highly accessible location.
- 7.85. I note the provisions of the Apartment Guidelines and Compact Settlement Guidelines, in particular SPPR 3 of the latter. In this regard, I am satisfied SPPR 3 provides in principle for car parking to be minimised, reduced or wholly eliminated in this case.
- 7.86. I have reviewed the planning authority road planning division report, and reference to the number and proximity of car sharing facilities and pay and display parking nearby. The report recommended permission be granted subject to conditions. Condition 12 of the planning authority decision requires the management of parking by a management company.
- 7.87. Parking on neighbouring streets is managed, with the exception of Marlborough Mews. The site is less than 180m walk to high-frequency bus services (that is, less than every 10 minutes frequency) on the NCR.
- 7.88. The submitted Car Parking Strategy and Mobility Management Plan sets out a rationale for the proposed parking provision. I note details in relation to the proximity and provision of car rental services, the distance to employment, services and facilities. I note that Luas and train services are located c.1.4km from the site. In particular I note details of Census results for the area are included which indicate that over half of households own no car and only c.5.2% own more than 1 car.
- 7.89. Having regard to the foregoing, to the proposed density and layout, to the location and car ownership levels in the area, and to the site's accessibility to high-frequency bus services, I am satisfied the proposal provides appropriate and sustainable parking provision, including the potential for visitor parking.

Related matters raised in the course of the appeal

McKee Barracks

- 7.90. The Department of Defence observation states the development being 5 no. storeys in height and directly overlooking offices and buildings in McKee Barracks will have very concerning implications for security and operations at the barracks. No further details are provided including the nature of the implications that may arise, however, I am conscious the provision of further details on the public record may not be feasible regarding security or defence.
- 7.91. I note the points made by the applicant, appellant, planning authority and application observers in this regard. I also note there are already a number of dwellings adjacent the Barracks, however I accept these are to the eastern side of the Barracks and not at the same elevation as the proposed development.
- 7.92. The subject site is zoned for residential development. McKee Barracks is c.45m away, measures over c.13 hectares, and comprises approximately 40 no. buildings.
- 7.93. Having regard to the foregoing, based on the available information and on relevant statutory instruments, policies and guidelines, I am not satisfied sufficient grounds have been provided to the Board to further alter the proposal in this regard. In the absence of additional detail, I do not consider it sufficiently clear as to the nature of the implications or what additional conditions would satisfy the Department's concerns. However, should the Board be minded, it may seek further submissions in this regard.
- 7.94. For completeness I note powers available to the Minister upon request of the Minister of Defence in relation to modification or revocation of permission where development would be harmful to the security or defence of the State (as set out in Section 44A of the Act 'Revocation or modification of planning permission for certain reasons').

Rail infrastructure

- 7.95. The first party submits drawings in this regard and a "Technical Note on Excavation Methodology in Proximity to Irish Rail Slope". I have reviewed the submission from Irish Rail, including the numerous points of technical design detail required by Irish Rail to be agreed prior to the commencement of development. These include the

nature of boundary treatment with the rail corridor, detailed design and construction in relation to the rail cutting, foundations, setback from the railway, water and drainage, and agreement of details prior to commencement with Irish Rail. I note the corresponding Condition 14 attached by the planning authority to its decision, and the appeal and planning application observation points relating to the proximity of the site to the rail corridor embankment. Irish Rail raises no objection to the proposed development, including in relation to the railway embankment, subject to conditions. I am generally satisfied Irish Rail's requirements can generally be dealt with by condition.

- 7.96. One appeal challenges the proposed building design, in particular the foundations. The appeal raises the potential for unknown issues regarding the stability of soil on the site and at the rail embankment, and that alternative foundation designs may be required. The appeal states raft foundations are proposed, however I note limited foundation design details are provided by the applicant. The applicant response to appeal states that a condition of sale requires the use of either augured or non-percussive pile foundations in any development of the appeal site. Considering the limited detail provided, I consider a revised condition for agreement with Irish Rail and the planning authority in this regard is required.
- 7.97. I have also considered the Railway Safety Commission report submitted by one of the appellants. It references a rail embankment slip in the area, however no details as to the specific location or nature of this incident are provided. I note the applicant response in this regard, including that the referenced slip was c.14 years ago, and that the proposed re-profiling of the site's ground levels on the subject site will reduce the volume of overburden. I also note that this matter was not raised by Irish Rail in their submission.
- 7.98. Irish Rail, who controls and manages the railway, have not objected to the development, and set out detailed prior-to-commencement conditions which they require to be agreed. The applicant has indicated they are amenable to this. No works to the rail embankment are proposed. All of the proposed works are within the application red line area and take account of railway embankment stability. I am satisfied the available information is sufficient for the granting of planning permission in this regard, subject to revised conditions for agreement between the two relevant parties.

Construction impacts

- 7.99. A number of appeals raised concerns regarding construction impacts, particularly in relation to dwellings on Marlborough Road, and propose specific mitigation measures in relation to these dwellings. I note the apparent deficiencies in these properties referenced by some of the appellants. I note too that appellants have sought surveys to be undertaken by the applicant of dwellings in the area.
- 7.100. I consider the majority of the suggested measures would be taken in the normal course of construction management, as set out in the submitted construction management plan, and that these would be sufficient to moderate expected construction related impacts from the proposal for the purposes of granting planning permission. Surveys of private dwellings are not within the control of the applicant, are a matter between the parties, and in any event I do not consider are warranted in this case.
- 7.101. Having regard to the information submitted including the construction management plan, to the nature and scale of development, to the location of the site relative to surrounding dwellings, and to the nature and width of Marlborough Road, I am satisfied these concerns and the construction impacts arising, including construction traffic impacts, that are expected from the proposed development can be appropriately managed with revised construction management conditions.

Water and drainage

- 7.102. I have reviewed the planning statement and submitted water and drainage plans, and the planning authority drainage division report which stated no objection subject to conditions.
- 7.103. Regarding surface water drainage and potential impacts on the railway line, concerns are raised by one appellant who submitted a report which refers to a land slip along this railway line as set out above. The applicant proposes arrangements for the controlled percolation and discharge to ground including via soakaways. Irish Rail and the planning authority drainage division raise no objection in this regard, subject to conditions. I note conditions recommended by the planning authority drainage division and Irish Rail in this regard, including in relation to surface water management and infiltration to be agreed with Irish Rail.

7.104. I note appellant concerns regarding the local water and drainage network. I have reviewed the pre-connection enquiry response from Irish Water which states that connection is feasible for water and wastewater without upgrades.

7.105. Overall, having regard to the nature and scale of the development, and its location proximate existing water services, I am satisfied the proposal is acceptable in these regards subject to conditions.

Waste

7.106. I note appeal points regarding the location of waste storage. The proposal as revised at further information provides for temporary waste storage within the development away from Marlborough Road. I am satisfied there is sufficient space for refuse collection vehicles to manoeuvre within and around the site to facilitate collection.

Procedure and application

7.107. I note points made in the appeals in relation to the sufficiency of information submitted and issues with the application procedure and assessment. I am satisfied based on the information on file that sufficient information is provided for the purposes of processing the appeal.

Conclusion

7.108. On balance I am satisfied the proposed development is consistent with the provisions of the Dublin City Development Plan 2022-2028 and relevant statutory guidelines, and that it would provide for an appropriate and sustainable form of development, subject to revised conditions. I also consider the proposed development satisfactorily resolves the previous reasons for refusal on the site in relation to communal amenity space, overlooking and privacy, and in relation to integration with the surroundings and impact on amenities of property in the vicinity. Based on the foregoing I generally concur with the planning authority decision, subject to revised conditions as set out below.

8.0 Appropriate Assessment

8.1. I have considered the proposed development in light of the requirements of Section 177U of the Planning & Development Act 2000 as amended. The subject site is not located within or adjacent any European Site designated SAC or SPA. The proposed

development is located within an urban area and comprises a residential development of 34 no. apartments in 2 no. blocks. No significant nature conservation concerns were raised as part of the planning appeal. Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment as there is no conceivable risk to any European Site. The reason for this conclusion is the nature of the development as construction of 2 no. apartment blocks and the location of the development in a serviced urban area, the distance to any European Sites and the urban nature of intervening habitats. I conclude that on the basis of objective information the proposed development would not have a likely significant effect on any European Site(s) 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 & Development Act 2000 as amended is not required.

9.0 Recommendation

- 9.1. I recommend that planning permission be **Granted**, subject to conditions, for the reasons and considerations below.

10.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2022-2028, including the 'Z1 Sustainable Residential Neighbourhoods' land use zoning objective for the area; to the development plan Core Strategy which promotes compact growth; to the location and existing pattern of development in the area; and to the nature, height and scale of the proposed development; it is considered that, subject to compliance with the conditions set out below, the proposed development would not unduly impact the character and heritage of the area, including McKee Barracks, the protected structures therein, or the conservation area of which it forms part; would not seriously injure the amenities of the area or of property in the vicinity; would provide for an acceptable level of residential amenity for future occupants; and would not have a serious detrimental impact on habitats and biodiversity in the area. It is further considered that the proposed development would not give rise to unacceptable traffic, congestion or traffic hazard in the area, or give rise to other

unacceptable impacts on infrastructure in the area, including water and rail infrastructure. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>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 received by the planning authority on the 11th day of May 2023, except as may otherwise be required in order to comply with the following conditions.</p> <p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) One storey shall be omitted from Block B. This shall be the third floor as shown on drawing no. PP-013, resulting in the omission of Units no. 29, 30 and 31. The fourth-floor plan (Units no. 32, 33 and 34) shall be relocated to third floor level. This permission therefore provides for 31 no. residential units;</p> <p>(b) Full details of the metal fins to the bedroom windows facing Marlborough Court in Block A, and facing No. 3 Marlborough Mews in Block B, shall be submitted, to include a drawing, at a scale of not less than 1:25, showing the materials to be used and the design of the fins, which shall allow for visibility from the windows while avoiding direct overlooking</p> <p>(c) All east facing balcony edges above ground floor level in Blocks A and B, including those on the southern elevation of Block B, shall be 2m high and consist of opaque or translucent glass.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of visual and residential amenity.</p>

3.	<p>The landscaping scheme shown on drawing number PP-003 Rev. B, as submitted to the planning authority on the 11th day of May 2023 shall be carried within the first planting season following substantial completion of external construction works. In addition to the proposals in the submitted scheme, the following shall be carried out:</p> <p>(a) The applicant shall consult with the Parks and Landscape Services Division of Dublin City Council in relation to the loss of the existing tree on the public footpath on Marlborough Road and shall comply with any requirements in this regard;</p> <p>(b) Measures for the protection of those trees which are proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of [five] years from the completion of the development [or until the development is taken in charge by the local authority, whichever is the sooner], shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of residential and visual amenity.</p>
4.	<p>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. The brick colour to be used shall be the same or similar as that used in the adjoining residential area / existing development along Marlborough Road.</p> <p>Reason: In the interest of visual amenity and to ensure an appropriate high standard of development.</p>
5.	<p>Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme.</p> <p>The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements /marketing signage relating to the name(s) of the development shall be erected</p>

	<p>until the developer has obtained the planning authority's written agreement to the proposed name(s).</p> <p>Reason: In the interest of urban legibility [and to ensure the use of locally appropriate placenames for new residential areas.</p>
6.	<p>The following shall be complied with:</p> <p>(a) The mitigation measures set out in Section 9 of the 'Biodiversity & Habitat Report' (prepared by EHP Services) as submitted to the planning authority on the 14th day of October, 2022 as part of the application shall be implemented in full.</p> <p>(b) The mitigation measures set out in Section 5 of the 'Bat Survey Final Report' (prepared by Faith Wilson Ecological Consultant) as submitted to the planning authority on the 14th day of October, 2022 as part of the application shall be implemented in full.</p> <p>Reason: To mitigate the loss of biodiversity on the site.</p>
7.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development including details of intended construction practice for the development, including hours of working, noise, vibration, air quality and dust management measures and off-site disposal of construction/demolition waste, as well as:</p> <p>(a) Details of on-site car parking facilities for site workers during the course of construction;</p> <p>(b) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;</p> <p>(c) Measures to obviate queuing of construction traffic on the adjoining road network;</p> <p>(d) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;</p> <p>(e) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site</p>

	<p>development works;</p> <p>(f) Provision of parking for existing properties at during the construction period;</p> <p>(g) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;</p> <p>(h) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;</p> <p>(i) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.</p> <p>(j) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority</p> <p>(k) The developer shall comply with the Construction & Demolition Good Practice Guidelines (as adopted by Dublin City Council). The Construction Management Plan shall be submitted to, and agreed in writing with, the Environmental Health (Air Quality Management and Noise Control) Unit of the planning authority prior to commencement of development.</p> <p>Reason: In the interest of amenities, public health and safety and environmental protection.</p>
8.	<p>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 open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
9.	<p>Prior to commencement of development, the developer shall enter into connection agreement(s) with Uisce Eireann (Irish Water) to provide for a service connection(s) to the public water supply and/or wastewater collection network.</p> <p>Reason: In the interests of public health and to ensure adequate water / wastewater facilities.</p>

10.	<p>The attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water within the site for the written agreement of the planning authority.</p> <p>Reason: In the interest of public health.</p>
11.	<p>The developer shall comply with the following requirements of Iarnród Éireann:</p> <p>(a) The developer shall engage with the Senior Track & Structures Engineer, Iarnród Éireann, Pearse Station, Westland Row, Dublin 2, and provide detailed cross sections to agree the line of the proposed railway boundary;</p> <p>(b) Due to proximity of the North Wall Great Southern & Western Railway line, upon agreement under item (a) above, the developer shall erect a 2.4m high suitable designed, solid block boundary treatment, on the developer's side of the boundary;</p> <p>(d) The maintenance of the above railway boundary treatment shall rest with the developer and their Successor-in-Title;</p> <p>(e) Provision shall be made by the developer for maintaining the security of the railway boundary during the course of the works and the boundary treatment should be completed before any major development works begin on site;</p> <p>(f) Railway mounds and ditches shall be preserved except where the written consent of Senior Track & Structures Engineer, Iarnród Éireann, Pearse Stn, Westland Row, Dublin 2, has been sought and received;</p> <p>(g) The developer shall not undermine the integrity of the soil cutting (Irish Rail Ref. CT0001D) which runs along the western boundary of the proposed development;</p> <p>(h) Any excavations which infringes upon the Track Support Zone will require permission and approval from the Senior Track & Structures Engineer, Iarnród Éireann;</p> <p>(i) Detailed designs of foundations and other substructure elements, if any, shall be submitted by the applicant to Iarnród Éireann (IÉ) for assessment and approval in writing prior to works commencing on site;</p>

	<p>(j) Approval in writing from the Senior Track & Structures Engineer, Iarnród Éireann, shall be required by the developer for the use of a crane that could swing over the railway property;</p> <p>(k) Any proposed services that are required to cross along, over or under the railway property shall be the subject of a wayleave agreement with Iarnród Éireann/ C.I.E.;</p> <p>(l) No overhang of any part of the development over the railway property shall be allowed without the prior written approval of the Senior Track & Structures Engineer, Iarnród Éireann;</p> <p>(m) No trees shall be planted directly on the railway boundary. The final location of proposed tree planting adjacent the railway boundary shall be agreed in writing with Irish Rail;</p> <p>(n) Lights from the proposed development, either during the construction phase or when the development is completed, shall not cause glare or in any way impair the vision of train drivers or personnel operating on track machines;</p> <p>(o) No additional liquid, either surface water or effluent shall be discharged directly into the railway property or into railway drains/ditches. Due to the presence of the railway embankment to the west of the site, details of proposals to infiltrate surface water into the ground within the site shall be agreed with Irish Rail. Confirmation of this agreement shall be submitted to Drainage Division of the planning authority prior to commencement of construction;</p> <p>An agreement in each of the above regards shall be submitted for the written agreement of the planning authority.</p> <p>Reason: In the interests of the safety of the operation of the railway.</p>
12.	<p>The developer shall comply with the following:</p> <p>(a) The developer shall carry out a Noise & Vibration Risk Assessment (NVRA) and accompanying Acoustic Design Statement (ADS). The NVRA shall consider a number of scenarios, including the following: within the development with windows closed; within the development with windows open and exterior of development within private or communal gardens. The detail of the ADS shall be commensurate with the level of risk identified in the NVRA. The ADS shall refer to the local</p>

	<p>authority's Noise Action Plan regarding development adjacent railways and specify appropriate mitigation measures. Detailed design and construction of residential units shall limit the impacts of noise and vibration from railway traffic and maintenance activities in accordance with the ADS recommendations.</p> <p>(i) The specific recommendations set out in Section 3.3 'Façade Design Recommendations' of the 'Noise and Vibration Impact Assessment' (prepared by Allegro Acoustics) as submitted to the planning authority on the 14th day of October 2022 as part of the application shall also be implemented in full. These include:</p> <p>(I) The installation of a higher performance glazing and structural element (as outlined in of the report) for all apartment blocks;</p> <p>(II) Consideration shall be given for the inclusion of an acoustically attenuated ventilation strategy in order to provide an option for residents to obtain a suitable level of ventilation without the requirement to open windows;</p> <p>(ii) The specific recommendations set out in Section 4.3 of the 'Noise and Vibration Impact Assessment' (prepared by Allegro Acoustics) as submitted to the planning authority on the 14th day of October, 2022 as part of the application shall also be implemented in full. In this regard, the developer shall carry out a detailed vibration impact assessment to confirm likely impacts from the railway and identify measures to appropriately mitigate and minimise vibration impacts to occupants of the development in line with appropriate standards (including BS6472-01 Guide to evaluation of human exposure to vibration in buildings: Part 1: Vibration sources other than blasting (BSI, 2008)). The applicant shall submit for the agreement of the planning authority detailed engineering structural design proposals in this regard.</p> <p>(b) The above measures shall be submitted for the agreement of the planning authority prior to commencement of development.</p> <p>Reason: In order to safeguard the amenities of future residents of the development in relation to noise and vibration.</p>
13.	<p>The developer shall comply with the following requirements of the planning authority:</p>

	<p>(a) Car parking spaces shall not be sold with units but shall be assigned and managed in a separate capacity via leasing or permit arrangements. These shall be retained by and managed by the Management Company for the development.</p> <p>(b) 50% of the car parking spaces shall be equipped with fully functional Electric Vehicle (EV) charging points and the remainder of the spaces shall be future proofed by the inclusion of ducting and/or cabling to permit the rapid future installation of EV charging point.</p> <p>(c) Cycle parking shall be secure, sheltered and well-lit with key/fob access. Cycle parking shall be in situ prior to the occupation of the proposed development.</p> <p>(d) Details of the proposed entrance arrangements shall be agreed with the Road Maintenance Division and Traffic Advisory Group (TAG) of the Planning Authority prior to the commencement of the development. Details of the materials proposed in public areas shall be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division.</p> <p>(e) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.</p> <p>(f) The developer shall be obliged to comply with the requirements set out in the Code of Practice.</p> <p>Reason: In the interests of orderly development and sustainable transportation.</p>
14.	<p>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 on the land in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall be referred by the planning authority or any other prospective party to the agreement, to An Bord Pleanála for determination.</p>

	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 for the area.
15.	<p>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 acceptable to the planning authority, to secure the reinstatement of services and infrastructure currently in the charge of Dublin City Council, including roads, footpaths, watermains, drains, and other services, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. 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.</p> <p>Reason: In the interest of traffic safety and the proper planning and sustainable development of the area.</p>
16.	<p>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 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.</p> <p>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.</p>
17.	The developer shall pay to the planning authority a financial contribution in lieu of public open space in respect of public open space benefiting development in the

	<p>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. This contribution shall be discounted proportionately in line with the extent of provision proposed by the applicant as public open space as shown on drawing Ref. "Site Layout PP-003" submitted to the planning authority on the 11th May 2023 as part of the applicant response to further information.</p> <p>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.</p>
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-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.-

Dan Aspell
Inspector
30th September 2024

APPENDIX 1

Form 1 EIA Pre-Screening [EIAR not submitted]

An Bord Pleanála Case Reference		317483-23	
Proposed Development Summary		Construction of 2 no. apartment blocks comprising 38 no. apartment units.	
Development Address		Site at Marlborough Road, Dublin 7, and located to the rear of properties on Marlborough Mews.	
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 X No No further action required
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?			
Yes	X	Class.....	EIA Mandatory EIAR required
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)
No		N/A	No EIAR or Preliminary Examination required
Yes	X	Class/Threshold.....	Proceed to Q.4
4. Has Schedule 7A information been submitted?			
No	X	Preliminary Examination required	
Yes		Screening Determination required	

Inspector: _____

Date: __29th August 2024__

Form 2
EIA Preliminary Examination

An Bord Pleanála Case Reference	317483-23		
Development Summary	Construction of 2 no. apartment blocks comprising 38 no. apartment units.		
Examination	Yes / No / Uncertain		
1. Is the size or nature of the proposed development exceptional in the context of the existing environment?	No		
2. Will the development result in the production of any significant waste, or result in significant emissions or pollutants?	No		
3. Is the proposed development located on, in, adjoining or have the potential to impact on an ecologically sensitive site or location*?	No		
4. Does the proposed development have the potential to affect other significant environmental sensitivities in the area?	No		
Comment (if relevant)			
Conclusion			
Based on a preliminary examination of the nature, size or location of the development, is there a real likelihood of significant effects on the environment **?			
There is no real likelihood of significant effects on the environment	EIAR not required	Yes	
There is significant and realistic doubt in regard to the likelihood of significant effects on the environment	Screening Determination required	No	
	Sch 7A information submitted?	Yes	No
There is a real likelihood of significant effects on the environment	EIAR is required (Issue notification)	No	

Inspector _____ **Date:** __29^h August 2024_____

DP/ADP _____ **Date:** _____

(only where EIAR/ Schedule 7A information is being sought)