



An
Bord
Pleanála

Inspector's Report

ABP-318733-23

Development

Demolition of a two-storey building plus site clearance and the erection of a part five storey /part six storey building, containing 11 apartments, communal open space at roof level, office unit on two levels, bicycle and bin storage with yard and associated site works.

Location

32 Infirmary Road (corner of Infirmary Road and Montpelier Hill), Dublin 7, D07 X628

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4563/23

Applicant

Frank McAuliffe

Type of Application

Planning Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant

Frank McAuliffe

Observer(s)

Martina Prendergast & others

Seán McCrum

De Burgh Road Residents Association

Date of Site Inspection

12th June 2024

Inspector

Conor Crowther

1.0 Site Location and Description

- 1.1.1. The site of approximately 0.03ha. at No.32 Infirmary Road, Dublin 7 is located on a sloped corner site at the junction of Infirmary Road and Montpelier Hill. The site is situated in the historic city core in the outer confines of the city centre. The surrounding area is an established inner-city area with a mixture of residential, commercial, legal and institutional development. The site is located approximately 2.3km west of Dublin City Centre, within the Local Authority area of Dublin City Council (the Planning Authority).
- 1.1.2. The site is bounded to the south by no.33 Infirmary Road, to the east by no.4 Montpelier Hill, to the north by Montpelier Hill and to the west by Infirmary Road. The Criminal Courts of Justice and the Phoenix Park lie further to the west of the site, within the Phoenix Park Conservation Area which does not encompass the site of the proposed development. The former military stores site lies to the north of the site on land owned by Dublin City Council. Parkgate Street lies further to the south of the site, including a quality bus corridor, with the River Liffey and Heuston Station further to the south.
- 1.1.3. The site consists of a part 1/part 2 storey above basement red bricked building with a hipped roof and 3 no. chimney stacks. The existing fenestration is infilled or enclosed by rusted metal grills. The shopfront at ground floor level is shuttered and appears unkempt. The area to the rear and side of the site appears to have been recently cleared of vegetation. The site appears to have formally functioned as a supermarket/off-license but has been vacant for some time. The site frontage abuts the public footpath on the northern and western elevations. The red brick façade along the northern and western frontage remains largely intact. The boundary along the remaining part of the western frontage includes wooden hoarding at ground floor level. The southern and eastern elevations are characterised by brick walls abutting neighbouring properties.

2.0 Proposed Development

- 2.1.1. The proposed development is described as follows:
 - Demolition of existing 2 storey building plus site clearance.

- Construction of a part 5 storey/part 6 storey building, containing 11 no. 1 and 2 bed apartments, communal open space at roof level, office unit on the 2 lower ground floors, bicycle and bin storage with yard and associated site works.

2.1.2. Along with the standard drawings and information, the application is accompanied by:

- Pre-Planning Discussions with Dublin City Council (see page 3 of 1st party appeal).
- Overshadowing Study.
- Internal Daylight & Sunlight Study.
- Archaeological Assessment Report.
- Condition Report of existing building.
- Housing Quality Assessment.

2.1.3. The following table outlines the key characteristics of the proposed development:

Key Characteristics	
Site Area	309.3m ²
Office floorspace ¹	143.38m ²
Apartment floorspace ²	749.02m ²
Apartment unit numbers	11
Apartment unit mix	5 no. 1-bed & 6 no. 2-bed
Residential Density	355dph (11/0.031ha)
Plot ratio	3.63
Site coverage	73.64%
Height	Up to 6 storeys (20.4m to parapet)
Dual Aspect	81% of units
Residential amenity space	78.81m ² (private balconies)

¹ Not including lobby and toilets

² Not including balconies

Public open space	0
Communal open space	19.3m ² (at rooftop level)
Car parking	0
Cycle parking	14 no. secure internal spaces

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Permission was REFUSED by the Planning Authority on the 23rd November 2023 for the following reasons:

- Height, scale and massing is excessive and would result in an unacceptable visual impact on adjoining streets and the surrounding area which includes the Phoenix Park conservation area. Overdevelopment of the site which would set a precedent that would seriously injure the residential amenities of adjoining occupiers and the visual amenities of the surrounding area.
- Contrary to Section 15.9.2 of the City Development Plan due to the layout, quality and quantity of floor areas, including communal open space proposed. This would result in serious injury to the residential amenities of future occupants.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning Officer's report dated 22nd November 2023 concluded that permission for the proposed development should be refused for the reasons set out above. The Planning Officer concluded that:

- The principle of residential and office development is acceptable within the context of the zoning for the site.
- No justification submitted for the demolition of the existing building.

- Provision of a ground floor office use is a welcome inclusion as it would increase footfall and enliven the area.
- The density of the proposed development is high in the context of the surrounding area and the density standards set out in the Development Plan. Notwithstanding this, a higher density could be considered on this site.
- The applicant has not provided a report justifying a higher density on this site.
- The plot ratio is above the indicative range set out in the Development Plan but is considered acceptable.
- The site coverage is within the parameters of the Development Plan.
- The proposed development would be highly visible from a number of views within the immediate vicinity.
- The proposed development would extend the full width of the site and includes a maximum shoulder height of c.20.4m, which would be significantly taller than adjoining buildings.
- Concerns relating to the impact of overlooking and overshadowing on the residential amenities of adjoining residential properties.
- Minimum floor areas are not achieved for all units. In addition, the majority of units do not exceed the minimum floor area standards by a minimum of 10%.
- Potential amendments to improve the development would materially alter the development proposed.
- Compliance with Section 15.9.2 of the Development Plan with regard to universal design is not demonstrated.
- The proposed development complies with the relevant standards relating to unit mix, dual aspect units, floor to ceiling height, lift and stair cores, internal daylight and sunlight and storage.
- The proposed development does not provide adequate private open space within all residential units.

- The proposed communal open space is unsatisfactory and overshadowed. The space would not provide an acceptable level of amenity space for future residents.
- No lifecycle report or microclimate assessments have been submitted with the application.
- Concerns relating to the overbearing impact of the proposed development due to the proposed separation distances.
- No evidence submitted by the applicant to demonstrate engagement with the Parks Department in respect of payment in lieu of public open space.
- Additional information would be required on the bicycle parking provision, mobility management, surface water management and blue roof design.
- No daylight/sunlight assessment provided in relation to potential overshadowing of the surrounding residential properties.
- Potential for overlooking onto the dwellings of De Burgh Road from the southern elevation.

3.2.3. Other Technical Reports

3.2.4. Archaeology Section – no objection, subject to conditions.

3.2.5. Drainage Section – requested additional information relating to surface water management and a blue roof design.

3.2.6. Environmental Health Section – no objection, subject to conditions.

3.2.7. Transportation Section - requested additional information relating to a mobility management plan for the site, additional bicycle parking and construction management planning.

3.3. **Prescribed Bodies**

3.3.1. Transport Infrastructure Ireland – no observations to make.

3.3.2. Irish Water/Uisce Éireann – no response received.

3.3.3. Irish Rail/Iarnród Éireann – no response received.

3.3.4. National Transport Authority – no response received.

- 3.3.5. Department of Housing, Local Government and Heritage – recommended conditions to mitigate disturbance of badger setts, bat roosting habitat and nesting birds.

3.4. **Third Party Observations**

- 3.4.1. A number of 3rd party observations were received in response to the application submitted to the Planning Authority. The issues raised by observers are generally reflected in the 3rd party observations on this appeal and Planning Authority decision submitted to the Board, and include also the following concerns:

- Considerable impact on services such as water and sewage.

4.0 **Planning History**

Subject Site:

- 4.1.1. 2797/12 (ABP Ref. PL 29N 241446) - Permission GRANTED by the Board in 2013 for demolition of existing building and construction of part 2 storey/ 3 storey and 4 storey over basement building and all associated and ancillary site works.
- 4.1.2. 2797/12/X1 – Extension of duration permission GRANTED in 2018 for a period of 5 years.

Neighbouring Sites of relevance:

- 4.1.3. 2673/20 (ABP Ref. 310498-21) – Permission GRANTED in 2021 for construction of a 4 storey building with 8 apartments at Montpelier Square, Montpelier Hill approximately 225m to the east of the site.
- 4.1.4. 4440/19 – Permission REFUSED in 2020 for construction of a 6 storey apartment block with 15 apartments at Montpelier Square, Montpelier Hill approximately 255m to the east of the site. Refusal on the grounds of overdevelopment, overlooking, unsatisfactory residential amenity, depreciation of the value of property in the vicinity and inadequate design.
- 4.1.5. 3210/19 – Part 8 permission GRANTED in 2019 for the demolition of the former stores and barracks building and the former administrative building and to construct a housing development consisting of 38 no. dwelling units within 2 blocks up to 5 storeys in height on the southern lower part of the former military stores site at the

corner of Montpelier Hill and Infirmary Road approximately 14m to the north of the site.

- 4.1.6. VS0011 – Vacant site at the corner of Montpelier Hill and Infirmary Road approximately 14m to the north of the site entered onto the vacant sites register in 2017.
- 4.1.7. 2210/11 (ABP Ref. PL 29N.238866) – Permission REFUSED by the Board in 2011 for demolition of nos. 26 and 26A Montpelier Hill approximately 92m to the east of the site and construction of 4 storey office building with bicycle parking and all associated works. Refusal on the grounds of visual impact on the streetscape and lack of justification for demolition.
- 4.1.8. I note that the Planning Authority included a number of other historic planning applications from the wider area in their assessment of the planning history which I do not consider to be pertinent to my assessment.

5.0 Policy Context

5.1. Design Standards for New Apartments – Section 28 Guidelines (2023)

- 5.1.1. These guidelines were originally issued in 2018 and amended numerous times, most recently in 2023. The guidelines represent the government position on the design of new apartment developments. The following standards are applicable to the proposed development:

- SPPR 1 *'Housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios)'.*
- SPPR 3 identifies the following minimum apartment floor areas of relevance to the proposed development:
 - 1-bedroom apartment (2 persons) – 45 sq.m.
 - 2-bedroom apartment (4 persons) – 73 sq.m.
- Section 3.7 - *'Private amenity space shall be provided in the form of gardens or patios/terraces for ground floor apartments and balconies at upper levels'...*
'A minimum depth of 1.5 metres is required for balconies, in one useable

length to meet the minimum floor area requirement’...’For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, private amenity space requirements may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality’.

- Section 3.8 Safeguarding Higher Standards – *‘it is a requirement that the majority of all apartments in any proposed scheme of 10 or more apartments exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10% (any studio apartments must be included in the total, but are not calculable as units that exceed the minimum by at least 10%)’.*
- SPPR 4 *‘In relation to the minimum number of dual aspect apartments that may be provided in any single apartment scheme, the following shall apply:*
 - *A minimum of 33% of dual aspect units will be required in more central and accessible urban locations, where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate.*
 - *For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, planning authorities may exercise further discretion to consider dual aspect unit provision at a level lower than the 33% minimum outlined above on a case-by-case basis, but subject to the achievement of overall high design quality in other aspects’.*
- SPPR 5 *‘Ground level apartment floor to ceiling heights shall be a minimum of 2.7m’.*
- Section 4.9 - *‘Sufficient communal storage area to satisfy the three-bin system for the collection of mixed dry recyclables, organic waste and residual waste’.*
- Section 4.10 – *‘The provision and proper future maintenance of well-designed communal amenity space will contribute to meeting the amenity needs of residents. In particular, accessible, secure and usable outdoor space is a high priority for families with young children and for less mobile older people’.*

- Section 4.11 – *“Roof gardens may also be provided but must be accessible to residents... These facilities offer a satisfactory alternative where climatic and safety factors are fully considered”.*
- Section 4.12 – *‘For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, communal amenity space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality’.*
- Section 4.25 - *‘For all types of location, where it is sought to eliminate or reduce car parking provision, it is necessary to ensure, where possible, the provision of an appropriate number of drop off, service, visitor parking spaces and parking for the mobility impaired’.*
- Appendix 1 identifies minimum floor areas for communal amenity space and private amenity space as follows:
 - One bedroom – 5 sq.m
 - Two bedroom (3 person) – 6 sq.m
 - Two bedroom (4 person) – 7 sq.m

5.2. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, 2024

5.2.1. These recently adopted ministerial guidelines serve to implement the principles of sustainable residential development in urban areas. The guidelines encourage the following approaches of relevance:

- Table 3.1 – *‘It is a policy and objective of these Guidelines that residential densities in the range 100 dph to 300 dph (net) shall generally be applied in the centres of Dublin and Cork’.*
- Realise opportunities for adaptation, reuse and intensification of existing buildings and for incremental brownfield and infill development.
- Deliver brownfield and infill development at scale at suitable strategic and sustainable development locations within the existing built-up footprint of the city and suburbs area or metropolitan towns.

- The quantum of car parking in new developments should be minimised to manage travel demand and to ensure that vehicular movement does not impede active modes of travel or have undue prominence within the public realm.
- SPPR 1 – Separation Distances – *‘minimum separation distances that exceed 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units or apartment units above ground floor level’.*
- Policy and Objective 5.1 - Public Open Space – *‘In some circumstances a planning authority might decide to set aside (in part or whole) the public open space requirement arising under the development plan’.....’In such circumstances, the planning authority may seek a financial contribution within the terms of Section 48 of the Planning and Development Act 2000 (as amended) in lieu of provision within an application site’.*
- SPPR 3 - Car Parking – *‘In city centres and urban neighbourhoods of the five cities’....’car-parking provision should be minimised, substantially reduced or wholly eliminated. The maximum rate of car parking provision for residential development at these locations, where such provision is justified to the satisfaction of the planning authority, shall be 1 no. space per dwelling’.*
- Section 5.2.5 - Bicycle Parking and Storage - *‘In areas of high and medium accessibility, planning authorities must ensure that new residential developments have high quality cycle parking and cycle storage facilities for both residents and visitors’.*
- SPPR 4 - Cycle Parking and Storage – *‘all new housing schemes (including mixed-use schemes that include housing) include safe and secure cycle storage facilities to meet the needs of residents and visitors’.*
- Section 5.3.7 – Daylight – This section proposes that planning authorities weigh up the overall quality of the design and layout of the scheme and the measures proposed to maximise daylight provision, against the location of the site and the general presumption in favour of increased scales of urban development.

- Appendix B – Measuring Residential Density – *‘When calculating residential densities within mixed use schemes, planning authorities shall exclude the % of non-residential uses in proportion to the net site area, i.e.*
 - *Calculate Net Site Area*
 - *Calculate the overall GFA*
 - *Differentiate between the % of residential and non-residential GFA*
 - *Reduce net site area by the percentage of non-residential GFA*
 - *Divide number of dwelling by reduced site area’.*

5.3. Dublin City Development Plan 2022-2028

5.3.1. The following policies and objectives of the Development Plan are of relevance to the proposed development:

- Zoning Objective Z5 (City Centre) - *‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.*
- The site is on an end of terrace building, adjacent to a terrace of houses to the east which are considered to be of regional importance on the National Inventory of Architectural Heritage (NIAH).
- Record of Protected Structures (RPS) No.8704 – 26 Montpelier Hill is located 103m to the east of the site.
- The site is within 30-100m of a Zone of Archaeological Constraint for 3 no. recorded monuments.
- Policy SC11 – Compact Growth.
- Policy SC19 – High Quality Architecture.
- Policy QHSN10 - Urban Density – *‘To promote residential development at sustainable densities throughout the city in accordance with the core strategy, particularly on vacant and/or underutilised sites, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area’.*

- Policy QHSNO11 – Universal Design.
- Policy QHSN36 – High Quality Apartment Development.
- Section 15.7.1 – Re-use of Existing Buildings.
- Section 15.9.2 – Unit Size/Layout – *‘The majority of all apartments in any proposed scheme of 10 or more apartments (excluding Build to Rent accommodation) shall exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%’.....‘50% of the apartments that are in excess of the minimum sizes should be designed in accordance with the guidance set out in Universal Design Guidelines for Homes in Ireland 2015 to ensure that they are suitable for older people, mobility impaired people, people living with dementia and people with disabilities’.*
- Table 15-5 – Minimum Floor Area Requirements for Apartments

Table 15-5: Minimum Floor Area Requirements for Apartments

Unit Type	Bedspace	Floor Area Requirement (min)
Studio	1 bedspace	37 sq. m.
1 bed	2 bedspaces	45 sq. m.
2 bed	4 bedspaces	73 sq. m.
3 bed	5 bedspaces	90 sq. m.

- Section 15.9.7 – Private Amenity Space – *‘Private amenity space shall be provided in the form of terrace, balcony or private garden and should be located off the main living area in the apartment’.*
- Section 15.9.8 – Communal Amenity Space - *‘The communal amenity areas should be of high landscape quality and provide for adequate daylight and sunlight access throughout the year. The communal amenity area should be functional and usable to a range of activities’.... ‘Communal amenity space should be located in areas that are overlooked and passively supervised’..... ‘On refurbishment or infill sites of up to 0.25 ha, the communal amenity requirements may be relaxed on a case by case basis’.*

- Section 15.9.9 – Roof Terraces - *‘Roof terraces will not be permitted as the primary form of communal amenity space but may contribute to a combination of courtyard and or linear green space. The provision of roof terraces does not circumvent the need to provide an adequate accessible ground floor residential amenity that achieves adequate sunlight and daylight levels throughout the day unless exceptional site-specific conditions prevail’.*
- Appendix 3 - Achieving Sustainable Compact Growth Policy for Density and Building Height in the City –
 - *‘The key factors that will determine height will be the impact on adjacent residential amenities, the proportions of the building in relation to the street, the creation of appropriate enclosure and surveillance, the provision of active ground floor uses and a legible, permeable and sustainable layout’.*
 - *‘Significantly higher density schemes, particularly when coupled with high buildings, can generate problems in terms of creating successful, well designed and sustainable communities. In some instances, it can have impacts on the amenities of existing residential communities and for the future occupiers of such schemes, as well as how such developments integrate with the existing urban fabric’.*

Table 1: Density Ranges

Location	Net Density Range (units per ha)
City Centre and Canal Belt	100-250

- *‘General presumption against schemes in excess of 300 units per hectare’.*
- *‘Development with a plot ratio over 3.0 must be accompanied by a compelling case’.*
- *‘In general, and in accordance with the Guidelines, a default position of 6 storeys will be promoted in the city centre and within the canal ring subject to site specific characteristics, heritage/environmental considerations, and social considerations in respect of sustaining*

existing inner city residential communities. Where a development site abuts a lower density development, appropriate transition of scale and separation distances must be provided in order to protect existing amenities’.

- *‘Proposals for increased height within key sensitive areas of the city including the city centre, the River Liffey and quays, Trinity College, Dublin Castle and medieval quarter, the historic Georgian core and squares and the canals etc. must demonstrate that they do not have an adverse impact on these sensitive environments and that they make a positive contribution to the historic context’.*
- *‘Higher densities will be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station in the plan’.*
- Appendix 5 – Transport & Mobility – Bicycle Parking Standards
 - Residential Apartment – 1 per bedroom (long term) – 1 per two apartments (short stay/visitor).
 - Offices – 1 per 75m² gross floor area (long term) – short stay/visitor requirements to be determined on a case by case basis.
- Appendix 16 – Sunlight & Daylight – Assessing Results – *‘it is noted that both BS 8206-2 and BS EN 17037 present minimum values for residential developments, rather than best practice values. This is very clearly laid out in clause 5.6 of BS 8206-2 and clause NA.2 of BS EN 17037. These minimum values will not produce spaces that are well daylit or be considered predominantly daylit. The planning authority also acknowledge that national policy aligns with the understanding that these values are minimum provisions. In this regard, there will be a general presumption against schemes where units fall below these minimum standards, and it is the expectation of the planning authority that a significant proportion of units should exceed the minimum standard in order to ensure high quality sustainable developments.... In exceptional circumstances, for example on a tightly configured urban site, where these minimum criteria cannot be achieved, the applicant should very clearly identify this and put forward a clear*

and robust rationale for compensatory measures applied to mitigate any shortfall in the minimum standards. From here, the planning authority will apply an exercise in discretion and balance that considers the wider impact of the development beyond matters relating to daylight and sunlight’.

5.4. Natural Heritage Designations

5.4.1. The closest site of natural heritage interest to the proposed development is the Grand Canal proposed Natural Heritage Area (002104) which is located approximately 1.5km to the south of the proposed development. Other sites of relevance include:

- The Royal Canal proposed Natural Heritage Area (002103) located approximately 2.1km to the north of the proposed development.
- The Liffey Valley proposed Natural Heritage Area (000128) located approximately 3.8km to the west of the proposed development.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (004024) located approximately 4.2km to the northeast of the proposed development.
- The North Dublin Bay proposed Natural Heritage Area (000206) located approximately 4.2km to the northeast of the proposed development.

5.5. EIA Screening

5.5.1. Having regard to the limited nature and scale of the proposed development, and the location of the site within a serviced urban area at a remove from areas of environmental sensitivity, 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 stage (see Appendix 2) and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A 1st party appeal was submitted by Frank McAuliffe, on the 23rd November 2023 opposing the decision of the Planning Authority to REFUSE permission. The grounds of appeal are summarised as follows:

- Previous applications have been granted onsite for 4 storey over basement offices. A condition report on the existing building was submitted with these applications.
- The National Criminal Courts building to the west of the site dominates the west side of Infirmary Road at a greater height than the proposed development.
- The proposed building is not excessive and is in accordance with NPO 13 of the National Planning Framework which identifies building height as an important measure to achieve compact growth.
- The site is ideally located within close proximity to various services.
- Planning policy at national and regional level promotes the concept of compact growth, including increased density and heights at underutilised locations.
- The following elements were considered by the Planning Authority to be acceptable at pre-planning stage:
 - Height of the proposed building.
 - 3-bed units would not be suitable at this location.
 - The amount of communal open space required.
- Reduced communal open space area proposed due to the close proximity of the site to the Phoenix Park.
- There is no loss of amenity to surrounding properties. The southern façade faces onto blank gables of adjoining properties.

- The top floor has been setback on the southern façade. There is a willingness to setback the top two floors further back from the southern façade, if considered necessary. No drawings are provided to demonstrate how the top two floors would be further setback.
- All apartments in the proposed development meet or exceed the requirements of the national standards and the Development Plan.
- There is an anomaly in the Development Plan as it states that a 2-bed unit is a four-person unit, whereas the 2-bed apartments in the proposed development cater for three people. Notwithstanding this, the apartments layouts can be amended to cater for 2-bed four person units.
- The proposed development complies with daylight and sunlight, internal storage, private open space, bicycle and bin storage, room and apartment size standards.

6.2. Planning Authority Response

6.2.1. The Planning Authority requests that the Board upholds the decision of the Planning Authority to REFUSE permission. In the event of a grant of permission, the Planning Authority requests that the following conditions be applied:

- A Section 48 development contribution condition.
- A bond payment condition.
- A development contribution condition in lieu of open space.
- A naming & numbering condition.
- A management company condition.

6.3. Observations

6.3.1. 3 no. observations were received by the Board on the 9th January 2024 from Seán McCrum, Martina Prendergast & others and the De Burgh Road Residents Association. The issues raised by observers are summarised as follows:

- The proposed development constitutes overdevelopment of the site.

- Potential for structural damage during demolition and during and after construction.
- Concerns about the height of the proposed development.
- The doubling of the plot ratio and density of this site has no regard to the architectural balance or the residential amenity of neighbouring buildings. The plot ratio and density are in excess of the Development Plan standards.
- Loss of natural daylight/sunlight to surrounding properties.
- The overshadowing study submitted by the applicant is deficient.
- Concern surrounding the light study submitted by the applicant.
- Loss of privacy from the associated design of the proposed development, including the open plan communal roof which will likely create noise and light nuisances.
- The proposed development does not include a compelling case for permitting higher plot ratios or site coverage than outlined in the Development Plan.
- Failure to maintain streetscape profiles as set out in the Development Plan.
- Negative impact on the existing neighbourhood and substantial harm to the unique character of Montpellier Hill.
- The applicant has failed to demonstrate compliance with the criteria set out in Section 15.4.2 (Architectural Design Quality) of the Development Plan.
- The applicant has failed to address overlooking and overbearance issues identified in Appendix 3 of the Development Plan (photographs are provided in support of this).
- Traffic impacts on the junction of Montpellier Hill and Infirmary Road.
- No mobility management plan or traffic plan has been lodged by the applicant, as required by development proposing no car parking.
- A Construction Traffic Management Plan should be submitted with the application.

- The absence of parking provision associated with the proposed development is inappropriate.
- Devaluation of homes in the vicinity, including impacts on working from home conditions.
- The proposed development sets a poor precedent and is out of character with the surrounding historic setting.
- Internal sections within the Local Authority have raised concerns with the proposed development.
- A Construction Waste Management Plan and Demolition Management Plan must be provided, as set out in Chapter 15 of the Development Plan.
- Concerns surrounding construction impacts.
- Ground investigations and a structural engineer's report should accompany the application.
- Feedback provided at pre-application stage has not been addressed by the applicant.
- No Basement Impact Assessment, Surface Water Management Plan, Lifecycle Report or Housing Quality Assessment has been provided by the applicant.
- The applicant has not made any changes to their application that would merit overturning the decision of the Planning Authority to refuse permission.
- The proposed development will front directly onto the footpath and the angled footprint of the western boundary of the site will give further prominence to the proposed development on the streetscape.
- Any building on this site should be setback from the footpath and only one elevation should be visible from the south.
- The proposed development will dominate the skyline when viewed from the Parkgate St/Infirmary Road junction and the Montpelier Hill/Infirmary Road junction.

- The scale, height and materials/finishes used on each façade will have a significant visual impact.

7.0 Assessment

7.1.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report of the Planning Authority and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Design & Layout.
- Residential Amenity.
- Other Matters.

7.2. Design & Layout

7.2.1. The Planning Authority, in their reasons for refusal, highlight issues in respect of design and layout of the proposed development. The height, density, plot ratio, visual impact and internal layout are all considered to be contributing factors to this. Thus, my assessment of the design and layout of the proposed development is centred on these sub-themes as follows:

7.2.2. Density & Height:

7.2.3. The residential density of the proposed development is approximately 355 units per hectare³ which is above the maximum density range of 250 units per hectare, as set out in the Development Plan. Appendix 3 of the Development Plan states that there is a general presumption against development in excess of 300 units per hectare and the Compact Settlement Guidelines support this approach. The plot ratio of the proposed development is 3.63 which is above the maximum plot ratio range of 3.0, as set out in the Development Plan. Appendix 3 of the Development Plan also states that a compelling case must be submitted in support of developments with a plot ratio in excess of 3.0.

³ If calculated in accordance with Appendix B of the Sustainable Residential Development and Compact Settlements Guidelines, the residential density would amount to a higher density.

- 7.2.4. The site coverage is approximately 73.6% which sits within the indicative range for development in this area of the city. This indicates that the proposed development may not constitute overdevelopment of the site. This does not negate the excessive density and plot ratio of the proposed development for which a compelling case has not been provided.
- 7.2.5. The height of the proposed development is a maximum of 5 storeys above lower ground floor, on a sloping corner site, surrounded by 2 storey above basement dwellings. This creates a significant height disparity between the proposed development and surrounding dwellings. I note that the appellant has argued that the height of the proposed development is justified based on the principles of compact growth which encourages increases in height, particularly in urban areas adjacent to public transport nodes. In this regard, I note that the site is within short walking distance of a quality bus corridor, a Luas stop and a train station.
- 7.2.6. Given that the density of the proposed development is higher than the maximum density range set out in the Development Plan and the prevailing height and density context, it is necessary to apply the performance criteria set out in Table 3 of Appendix 3 of the Development Plan. In the following table I outline and assess the proposed development against the relevant performance criteria for both height and density:

Objective	Assessment relative to Performance Criteria
1. To promote development with a sense of place and character	<p><u>Considered not to achieve this objective</u> due to the following:</p> <p>The proposed development respects the existing and established surrounding urban structure to the west but does not respect the existing dwellings to the east and south of the site. This is due to the combination of the height, density and site coverage of the proposed development which does not allow for sufficient setback from existing dwellings, including a neighbouring terrace listed on the NIAH, or an appropriate transition in scale.</p>

	<p>Although the proposed development is located on a highly accessible corner site, the design of the proposed development does not enhance the character of the area. In this way, the development does not enhance the quality design of the area and is therefore not in accordance with Policy QHSN10 of the Development Plan.</p>
<p>2. To provide appropriate legibility</p>	<p><u>Considered to achieve this objective</u> due to the following:</p> <p>The existing building fronts onto Montpelier Hill on its northern elevation and Infirmary Road on its western elevation. The building is currently vacant and dilapidated with boarded up windows and entrances. The proposed development would positively contribute to the legibility of the area by redeveloping the site and providing for active street frontages at ground level. The increased height of the proposed development could contribute to the legibility of the area by reinforcing the function of the site as a corner site.</p>
<p>3. To provide appropriate continuity and enclosure of streets and spaces</p>	<p><u>Considered to achieve this objective</u> due to the following:</p> <p>Due to the inactive façade of the existing vacant building, the proposed development would serve to enhance the urban design context. The proposed development would provide adequate surveillance through provision of increased fenestration at ground level and balconies above ground level. The provision of entrances at lower ground floor and ground floor level would also serve to generate street-level activity, animating what is a currently inactive façade.</p>
<p>4. To provide well connected, high quality and active public and</p>	<p><u>Considered not to achieve this objective</u> due to the following:</p> <p>I note that no public open space is provided as part of the proposed development. The site is a small infill urban site</p>

communal spaces	and is therefore constrained with regard to the provision of public open space. I consider the quality and quantity of communal open space provided to be deficient and this is discussed in further detail in Section 7.3.9-7.3.10 of my report. On this basis, I am not of the view that the proposed development provides for active communal open spaces.
5. To provide high quality, attractive and useable private spaces	<u>Considered to achieve this objective</u> due to the following: As described in Section 7.3.11 of my report, I believe the proposed development can provide sufficient private open space of a high quality. As discussed in Section 7.3.13 of my report, I am satisfied that all habitable rooms would receive reasonable levels of natural light. This is supported by the appellant's daylight and sunlight assessment. In addition, as discussed in Section 7.3.8 of my report, I consider that significant overlooking of neighbouring dwellings would not occur. Thus, I am of the opinion that the proposed development provides for high quality useable private spaces.
6. To promote mix of use and diversity of activities	<u>Considered to achieve this objective</u> due to the following: I note that the proposed development includes for mixed use residential and office development. Thus, the proposed development satisfies this criterion on this basis. In addition, the proposed development provides a range of housing typologies including a mix of 1 bed and 2 bed apartments. In this way, I consider that the proposed development would contribute positively to the existing neighbourhood.
7. To ensure high quality and environmentally	<u>Considered not to achieve this objective</u> due to the following:

<p>sustainable buildings</p>	<p>I note that the appellant has not submitted sufficient detail to determine the quality of construction material, passive solar gain of surrounding buildings, building energy efficiencies, surface water management, flood risk and embodied energy impacts.</p> <p>As described in Sections 7.3.4 and 7.3.5 of my report, I am satisfied that the proposed development would not materially overshadow surrounding buildings. This is supported by an Overshadowing Study submitted by the appellant.</p> <p>I note that the proposed development provides for dual aspect fenestration in approximately 81% of the residential units. This is well in excess of the 33% minimum requirement set out in the Apartment Guidelines. Thus, I am satisfied that the proportion of dual aspect fenestration has been maximised in this instance.</p>
<p>8. To secure sustainable density, intensity at locations of high accessibility</p>	<p><u>Considered not to achieve this objective</u> due to the following:</p> <p>As noted in Section 7.2.5 of my report, the proposed development is located in a highly accessible area that is well served by public transport. However, the density of the proposed development is higher than the Development Plan standards and no compelling argument has been submitted in support of this increased density.</p> <p>The proposed development does not include any car parking which is wholly justifiable considering the accessibility of the site. The proposed development does not provide for loading or servicing vehicle parking which may lead to inappropriate and haphazard parking behaviour in the immediate vicinity of the site. I therefore</p>

	do not consider the density of the proposed development to be sustainable.
9. To protect historic environments from insensitive development	<p><u>Considered not to achieve this objective</u> due to the following:</p> <p>As set out in Section 7.4.5 of my report, I do not consider that the proposed development has appropriately considered the impact on the surrounding historic environment, particularly regarding the proximity of recorded monuments and buildings listed on the NIAH.</p>
10. To ensure appropriate management and maintenance	<p><u>Considered not to achieve this objective</u> due to the following:</p> <p>I note that the submitted documentation does not include an appropriate management plan addressing matters of security, waste management, servicing etc. Whilst such plans can be required by way of planning condition, in the event of a grant of planning permission, I am not satisfied that the appellant has had sufficient regard to same. This is reflected in the lack of loading or service vehicle parking provided. Thus, I believe that there is no surety that the proposed development would be suitably managed and maintained.</p>

- 7.2.7. As can be seen above, the majority of criteria set out in Appendix 3 are not satisfied. This demonstrates that the development as proposed is not an appropriate response to the site or its context.
- 7.2.8. Although policy support exists for higher density development adjacent to public transport corridors, this is not the sole factor in assessing the justification for such development. I am of the view that the appellant has failed to fully consider the full range of factors in justifying increased density, including the design of the development, setback distances to surrounding dwellings and the provision of an adequate quantity and quality of communal open space, for example. Thus, I

consider the proposed development to be disproportionate to the surrounding area and to represent overdevelopment of the site.

7.2.9. The Criminal Courts of Justice building adjacent to the site is cited as a precedent example of increased building height in the area. I do not consider that this building would create a precedent for the subject site, given its landmark nature justified by the national importance of its function. Thus, I consider that an increase in height of such a scale is unwarranted on this basis. The permitted Local Authority residential site fronting onto Montpelier Hill to the immediate north of the site is also cited as precedent for increased building heights. The tallest building on this site will rise to 5 storeys, however, the site is much larger than the subject site which allows for acceptable separation distances from existing neighbouring dwellings of a smaller scale.

7.2.10. Having regard to the height disparity between the proposed development and surrounding existing dwellings, it is evident that a setback at the 4th floor, as suggested in the 1st party appeal, would not provide for a suitable height transition. Thus, the proposed development would appear incongruous in the context of surrounding dwellings. This is compounded by the sloping nature of the site which elevates the northern elevation approximately 2m above the southern elevation and the northwestern elevation approximately 1.5m below the northeastern elevation. This is particularly evident in the contiguous elevations submitted by the appellant which demonstrates that the proposed development is out of proportion with the street and surrounding dwellings. Thus, I agree with the concerns of the neighbouring observers regarding the height of the proposed development, and I do not consider that the appellant has sufficiently addressed these concerns.

Visual Impact:

7.2.11. I note that the proposed development would be visually dwarfed by the Criminal Courts of Justice building to the immediate west of the site. Conversely, when considered in the context of Montpelier Hill looking east from Infirmary Road the proposed development would have negative visual impacts on the surrounding area due to its incongruous height and scale. Further to this, the proposed gable end wall along the eastern frontage creates an undesirably blank frontage when viewed from Montpelier Hill looking west. I am of the opinion that this would have a negative

impact on the streetscape from this viewpoint. I consider that the design incorporates largely monotonous features which do not serve to distinguish the mixed-use elements of the proposal or add visual interest to the structure. This does not accord with the provisions of Policy QHSN10 of the Development Plan which emphasises the need for high standards of urban design and architecture.

7.2.12. I note that the Planning Authority's Archaeology Section concluded that the appellant has not provided sufficient architectural analysis of the existing building onsite. This is compounded by incorrect assertions in the appellant's Archaeological Assessment, undertaken by CCH Architects, regarding the proximity of the site to recorded monuments, as highlighted by the Planning Authority's Archaeology Section. Notwithstanding the opinion of the Planning Authority, I do not consider the existing building to be of particular architectural merit, noting that it is not listed as a protected structure and is not identified as a building of importance on the NIAH. This does not preclude the consideration of adjacent buildings and monuments of importance. Given the terraced nature of the adjoining buildings of importance, I am of the opinion that the existing building is strongly related to the adjoining terrace of houses to the east due to the minimal separation between it and the terraced housing. This is supported by the fact that the structure of the existing building presents as a continuum of the adjoining terrace along Montpelier Hill but is noticeably different in terms of its roof profile and fenestration, for example. Thus, I am of the view that the proximity of the proposed development to buildings identified on the NIAH and recorded monuments has not been appropriately considered in the design of the proposed development.

7.2.13. In conclusion, I consider that the proposed development would have a negative visual impact on the streetscape due to the design, height and scale of the proposed development.

Internal Layout:

7.2.14. Despite the significantly increased floor area compared to the existing building, the proposed development does not meet the minimum floor area requirements, plus the 10% threshold, as set out in Section 15.9.2 of the Development Plan and Section 3.8 of the Apartment Guidelines. The majority of apartments (units 2,5,6,7,8,10 and 11) do not provide sufficient minimum floor area above this 10% threshold. I note that all

apartments meet the minimum floor area requirements set out in SPPR 3 of the Apartment Guidelines (see Section 5.1.1 of this report), except apartment unit 10 which fails marginally. The following table provides a comparison of compliance with the differing floor area requirements:

Apartment	Floor Area (m ²)	Minimum Requirement (m ²)	Minimum Requirement + 10% (m ²)
1 (2 bed)	115.12	73	80.3
2 (2 bed)	73.85	73	80.3
3 (1 bed)	53.37	45	49.5
4 (2 bed)	93.94	73	80.3
5 (1 bed)	48.21	45	49.5
6 (2 bed)	73.86	73	80.3
7 (2 bed)	74.75	73	80.3
8 (1 bed)	48.21	45	49.5
9 (1 bed)	49.85	45	49.5
10 (2 bed)	72.14	73	80.3
11 (1 bed)	45.72	45	49.5

7.2.15. I do not agree with the Planning Authority's assessment of bedroom 2 in apartment unit 1 as I believe that it aligns with the requirements of the Apartment Guidelines, in that, it is a single bedroom unit within a 2-bed apartment. The minimum aggregate floor area for a single bedroom unit within a 2-bed apartment would be 20.1m², as per the Apartment Guidelines, which is achieved within apartment unit 1.

7.2.16. I consider that the proposed development largely meets the minimum floor area requirements as set out under SPPR 3 in the Apartment Guidelines. However, as can be seen above, that the majority of the units do not meet the 10% threshold. I am therefore of the opinion that the quantity of apartment floorspace is inadequate resulting in a substandard development that would not provide for an acceptable amount of living space for future residents.

7.3. Residential Amenity

- 7.3.1. With regard to the impact of the proposed development on residential amenity, my assessment considers both the impact on the residential amenity of neighbouring occupiers and of future residents of the proposed development itself. I note that the appellant has referenced, in a number of instances, advice provided by the Planning Authority at pre-planning stage. I do not consider this to be of relevance to my assessment as the advice provided at pre-planning stage is without prejudice.

Neighbouring Dwellings

- 7.3.2. Overlooking, overshadowing and overbearing concerns have been raised by neighbouring observers to the immediate east and south of the site. The eastern and southern elevations of the site front onto gable walls of existing residential dwellings.
- 7.3.3. The sloping nature of the site and the height and scale of the proposed development gives rise to overshadowing and overbearing concerns, due to the 2-storey nature of neighbouring dwellings. This is reflected in the Planning Authority's reasons for refusal which further highlights concerns surrounding the potential impact on the residential amenities of neighbouring occupiers.
- 7.3.4. In respect of overshadowing, the appellant has relied on the conclusions of an Overshadowing Study, undertaken by Base Energy, which was provided by the Planning Authority as part of the case file on the 8th January 2024. I note that the Overshadowing Study assesses the impact of the proposed development on nos. 1, 4, 6 & 8 Montpellier Hill to the immediate east of the site. The study concludes that the overshadowing impact on said dwellings is acceptable based on an analysis of the available sunlight during the equinox (21st March) and the effect on the former sunlight value of the site, in accordance with the BRE Guidelines relating to shadow. On this basis, I am satisfied with the findings of this study and that neighbouring dwellings to the immediate east would not be materially overshadowed by the proposed development.
- 7.3.5. The Overshadowing study does not take account of the overshadowing impact on the dwellings to the immediate south of the proposed development. I am of the opinion that the overshadowing impact of the proposed development on such dwellings to the south would be minimal and any such impact would be acceptable in this urban context. The location of the proposed development to the north of said dwellings further reduces overshadowing impacts.

- 7.3.6. I note that no analysis was undertaken of the impact of the proposed development on the adjacent dwellings' access to daylight and sunlight. In the absence of this information, no evidence is provided that impacts won't occur. However, I note that there are no directly opposing windows fronting onto the proposed development from neighbouring dwellings.
- 7.3.7. I have concerns about the height and density of the proposed development and the overbearing impact this may have on neighbouring dwellings. I am of the view that the proposed development does not achieve an appropriate transition of scale, as required by the Development Plan. The positioning of the rear gardens of nos. 4 & 6 Montpelier Hill at lower ground floor level is likely to provide for a steep transition in scale along the eastern boundary of the site whereby an overbearing effect on said dwellings is likely to occur. The elevational changes in the contiguous elevations submitted by the appellant demonstrate a blunt transition in height and scale to neighbouring dwellings and only include minimal setbacks. The transition is such that it does not incorporate an appropriate setback from neighbouring dwellings which would allow for a 'softer' transition. I am therefore of the opinion that the proposed development would have an overbearing impact on neighbouring dwellings to the east and to the south where residential amenities are currently uninhibited at lower ground floor level.
- 7.3.8. With regard to overlooking of neighbouring dwellings, I am satisfied that the proposed development would not lead to overlooking of neighbouring dwellings due to the orientation and layout of the fenestration and balconies. This is further supported by the fact that the gable end walls of neighbouring dwellings bordering the eastern and southern elevations of the site do not include any windows. Thus, there is no opportunity for overlooking of living spaces within these neighbouring dwellings. I accept that there may be overlooking of private amenity spaces to the rear of dwellings on De Burgh Road from windows along the southern elevation of the site, however, I consider that the level of overlooking would be minimal and oblique in nature. Thus, I am satisfied that the proposed development would not lead to significant overlooking of neighbouring dwellings.

Future Residents – Communal Open Space

7.3.9. The rooftop communal area provided as part of the proposed development is clearly deficient in that it is poorly orientated, is not overlooked and does not meet the communal amenity space floor area set out in the Apartment Guidelines. In addition, I do not consider the lobby and lift areas constitute communal open space. Thus, I consider the proposed development communal open space provision to be 19.3m², which is well below the quantity of communal open space required by the Apartment Guidelines (66m²). I note that the Development Plan identifies a minimum quantum of communal open space as per the Apartment Guidelines and that communal open space requirements may be relaxed on infill or refurbishment sites of up to 0.25ha. Section 15.9.9 of the Development Plan also allows for deviation from the roof terrace restrictions, where exceptional circumstances exist. I note that a reduced quantum of communal open space by way of a rooftop terrace may be justified on the site of the proposed development due to the constraints of the site and its proximity to the Phoenix Park, an internationally significant urban park. I am not, however, of the view that the communal open space proposed is acceptable as it would not serve to improve the residential amenities of future residents due to the quantitative and qualitative inadequacies of the space proposed. I am also not of the view that this can be addressed by way of planning condition without materially altering the development as proposed due to the restricted nature of the site.

7.3.10. I note that concerns have been raised by observers in relation to the potential for the rooftop communal area to create noise and nuisance. Given the orientation of the rooftop communal area facing onto Montpellier Hill, I consider that there is sufficient separation between this area and neighbouring dwellings as to mitigate noise levels. In any case, the site is located within an urban area in a city centre where such rooftop terraces are commonly provided as communal open space.

Future Residents – Private Open Space

7.3.11. With regard to private open space provided within each apartment, I note that no minimum requirements for private open space are detailed in the Development Plan and that the Apartment Guidelines require a minimum of 5m² for 1 bed units, 6m² for (3 person) 2 bed units and 7m² for (4 person) 2 bed units. I note that the Planning Authority have assessed the 2 bed units as 4 person units. Thus, they have determined that 3 no. 3 person/2 bed units (2, 6 and 7) do not have the required minimum private open space at approximately 6.95m² each. This is marginally less

than the 7m² requirement for such units. Considering the appellants willingness to repurpose the 2 bed units as 4 person units and given the minimal internal changes required to the layout to achieve the minimum private open space requirements, I am of the view that this could be addressed by way of condition amending the internal layout and balconies, if the Board were minded to grant permission. However, such condition would likely require the reduction of the internal floor area to facilitate larger balconies, and this would exacerbate the issues raised with regard to the minimum floor areas proposed, as discussed in Sections 7.2.14-7.2.16 of my report.

Future Residents – Universal Design

- 7.3.12. I note that the Planning Authority expressed concern with the proposed development's ability to comply with universal design standards for older people and people with mobility impairment, for example. Whilst I am of the view that the proposed development does not adequately apply universal design standards by way of suitable windows within the apartment units and signage within communal areas, I am satisfied that this could be addressed by way of planning condition by requiring suitable windows and signage, should the Board be minded to grant planning permission.

Future Residents - Daylight & Sunlight

- 7.3.13. With regard to best practice on the matter of daylight and sunlight assessment, I am guided by the standards set out in A New European Standard for Daylighting in Buildings IS EN17037:2018, UK National Annex BS EN17037:2019 and the associated BRE Guide 209 2022 Edition (June 2022). I note that the appellant's Sunlight & Daylight Assessment applied the abovementioned standards by means of an illuminance and sunlight exposure calculation to assess the performance of the proposed development. The assessment concludes that all habitable rooms tested, meet and are in excess of the minimum requirements of the BRE Guidelines. The Planning Authority indicated that they consider the results of this assessment to be acceptable and I am in agreement with the Planning Authority on this matter.

7.4. Other Matters

- 7.4.1. I note concerns raised by observers regarding traffic and access issues that may be generated by the proposed development. I also note that no Mobility Management Plan or Construction Traffic Management Plan has been submitted by the appellant.

I consider that this could be appropriately addressed by way of planning condition, if the Board are minded to grant planning permission. Notwithstanding the omission of the aforementioned management plans, the appellant has provided sufficient detail regarding access to the site by non-vehicular modes in line with the provisions of the Compact Settlement Guidelines, thereby, justifying the zero car parking approach. With regard to operational parking demands including loading, servicing and visitor parking, I am not satisfied that this can be accommodated within the existing on-street parking arrangements. Thus, I consider the proposed development to be deficient in its lack of provision of a loading bay/set-down and visitor parking. The Planning Authority also indicated that they would require further information on this matter, if they were minded to consider granting permission. Given the substantive reasons for refusal, it is not considered necessary to include this matter in the reasons for refusal.

- 7.4.2. I am in agreement with the Planning Authority's Transport Planning Division views on the level of bicycle parking provided, in that, the proposed development provides 11 no. bicycle parking spaces less than the minimum requirement, as set out in Appendix 5 of the Development Plan. In total, the minimum bicycle parking requirement amounts to approximately 25 spaces. I also consider that this could be appropriately addressed by way of planning condition by amending the internal layout, in the event of a grant of planning permission.
- 7.4.3. I note that permission was previously granted in 2013 on this site for a similar mixed-use development up to 4 storeys in height. The appellant has cited this precedent development in support of the proposed development. Whilst this precedent development supports the principle of the proposed development, I am not of the view that it supports the increased scale, density and height of the proposed development. Rather, it demonstrates the level of development that could be achieved on this site when suitable setbacks from neighbouring dwellings are applied, and a more innovative design approach is taken.
- 7.4.4. In citing the previously granted development onsite, the appellant also refers to a Condition Report undertaken by CCH Architects on the existing building as part of the previously granted onsite development, which is included on the file. I am satisfied that this Condition Report appropriately demonstrates the poor quality of the site and of the building itself. In addition to this, it is evident from my site visit and

from Google Map street views that the site has been in a state of disrepair for some time. I therefore consider there to be sufficient evidence on file to support the demolition of the existing building, as required by Section 15.7.1 of the Development Plan.

7.5. Conclusion

- 7.5.1. Having regard to the foregoing, I am of the view that the combination of the density, plot ratio, height and scale of the proposed development would lead to an incongruous, overbearing and overdeveloped structure, thus, materially impacting the residential amenities of neighbouring inhabitants. In addition, I am of the opinion that the design of the proposed development has not sufficiently considered the proximity of buildings of architectural importance and recorded monuments and would lead to a negative visual impact on the immediate surrounds. I also do not consider the quality and quantity of the apartment floor space and communal open space provision to be acceptable which would negatively impact the residential amenities of future residents. I consider that the proposed development is not in accordance with the provisions of the Dublin City Development Plan, particularly Policy QHSN10, Section 15.9.2 & 15.9.8 and Appendix 3 of the Development Plan and would result in an incongruous development that would be inconsistent with neighbouring dwellings.

8.0 AA Screening

Appropriate Assessment Screening Determination (Stage 1, Article 6(3) of Habitats Directive)

- 8.1.1. I have considered the proposed development of a mixed-use part 5 storey/part 6 storey building in light of the requirements of S177S and 177U of the Planning and Development Act 2000, as amended.
- 8.1.2. A screening report for Appropriate Assessment was not submitted with this planning appeal case. However, in the Local Authority assessment of the proposed development, Appropriate Assessment Screening was undertaken by Dublin City Council as part of their planning assessment and a finding of no likely significant effects on a European Site was determined.

- 8.1.3. A detailed description of the proposed development is included in Section 2.1.1 of my report. In summary, the proposed development comprises the demolition of an existing 2 storey building plus site clearance and construction of a building up to 6 storeys in height including 11 no. 1 and 2 bed apartments, communal open space at roof level, office unit on the 2 lower ground floors, bicycle and bin storage with yard and associated site works.
- 8.1.4. There are no watercourses or other ecological features of note on the site that would connect it directly to European Sites in the wider area. The site is located approximately 200m from the River Liffey which drains to Dublin Bay.

European Sites

- 8.1.5. The proposed development site is not located within or immediately adjacent to any site designated as a European Site, comprising a Special Area of Conservation (SAC) or Special Protection Area (SPA). Four European site are located within 10km of the potential development site:
- South Dublin Bay and River Tolka Estuary Special Protection Area (004024)
 - North Dublin Bay Special Area of Conservation (000206)
 - North Bull Island Special Protection Area (004006)
 - North-West Irish Sea Special Protection Area (004236)
- 8.1.6. The South Dublin Bay and River Tolka Estuary SPA comprises a substantial part of Dublin Bay and is located 4.5km east of the site. It includes the intertidal area between the River Liffey and Dún Laoghaire, and the estuary of the River Tolka to the north of the River Liffey, as well as Booterstown Marsh. A portion of the shallow marine waters of the bay is also included. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest.
- 8.1.7. The North Dublin Bay SAC covers the inner part of north Dublin Bay, the seaward boundary extending from the Bull Wall lighthouse across to the Martello Tower at Howth Head. The North Bull Island is the focal point of this site. The SAC is located 7.8km east of the site. The site is a Special Area of Conservation under the EU Habitats Directive.

- 8.1.8. The North Bull Island SPA covers all of the inner part of north Dublin Bay, with the seaward boundary extending from the Bull Wall lighthouse across to Drumleck Point at Howth Head. The SPA is located 7.8km east of the site. Saltmarsh extends along the length of the landward side of the island and provides the main roost site for wintering birds in Dublin Bay. The island shelters two intertidal lagoons which are divided by a solid causeway. These lagoons provide the main feeding grounds for the wintering waterfowl. The sediments of the lagoons are mainly sands with a small and varying mixture of silt and clay. The site is a Special Protection Area under the EU Birds Directive, of special conservation interest.
- 8.1.9. The North-west Irish Sea SPA constitutes an important resource for marine birds and is located approximately 9.6km east of the site. The estuaries and bays that open into it along with connecting coastal stretches of intertidal and shallow subtidal habitats, provide safe feeding and roosting habitats for waterbirds throughout the winter and migration periods. These areas, along with more pelagic marine waters further offshore, provide additional supporting habitats (for foraging and other maintenance behaviours) for those seabirds that breed at colonies on the north-west Irish Sea's islands and coastal headlands. These marine areas are also important for seabirds outside the breeding period.
- 8.1.10. Given the limited scale of the proposal, I do not consider it necessary to examine the potential for significant effects on any European Sites beyond those of South Dublin Bay and River Tolka Estuary, North Dublin Bay, North Bull Island and North-West Irish Sea.

European Site	Qualifying Interests (summary)	Distance	Connections
South Dublin Bay and River Tolka Estuary Special Protection Area (004024)	Wintering water birds (13 x species) Wetland and waterbirds	4.6km	No direct
North Dublin Bay Special Area of Conservation (000206)	Mudflats and sandflats not covered by seawater at low tide [1140], Annual vegetation of drift lines [1210], Salicornia and other annuals colonising mud and sand [1310], Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330], Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410], Embryonic shifting dunes [2110], Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120], Fixed coastal dunes with herbaceous	7.8km	No direct

	vegetation (grey dunes) [2130], Humid dune slacks [2190], <i>Petalophyllum ralfsii</i> (Petalwort) [1395]		
North Bull Island Special Protection Area (004006)	Wintering water birds (18 x species) Wetland and waterbirds	7.8km	No direct
North-West Irish Sea Special Protection Area	Wintering and migratory water birds (21 x species)	9.6km	No direct

Likely impacts of the project (alone or in combination)

- 8.1.11. Due to the brownfield nature of the development site and the presence of a significant buffer area (urban development) between the brownfield site and the River Liffey, I consider that the proposed development would not be expected to generate impacts that could affect anything but the immediate area of the development site, thus having a very limited potential zone of influence on any ecological receptors.
- 8.1.12. The proposed development would not have direct impacts on any European site. During site clearance, demolition and construction of the proposed building and site works, possible impact mechanisms of a temporary nature include generation of noise, dust and construction related emissions to surface water.
- 8.1.13. The contained nature of the site (serviced, defined site boundaries, no direct ecological connections or pathways) and distance from receiving features connected to European Sites makes it highly unlikely that the proposed development could generate impacts of a magnitude that could affect European Sites.
- 8.1.14. Given the scale of the proposed development within a suburban area, I do not consider it likely that any temporary noise or human disturbance that may occur during the construction phase would represent any significant increase on the current baseline.

Likely significant effects on the European sites in view of the conservation objectives

- 8.1.15. The construction or operation of the proposed development will not result in significant impacts that could affect the conservation objectives of the SPA. Due to distance and lack of meaningful ecological connections there will be no changes in ecological functions as a result of any construction related emissions or disturbance.

There will be no direct or ex-situ effects from disturbance on mobile species including otter during construction or operation of the proposed development.

In combination effects

8.1.16. The proposed development will not result in any effects that could contribute to an additive effect with other developments in the area.

8.1.17. No mitigation measures are required to come to these conclusions.

Overall Conclusion

Screening Determination

8.1.18. Having carried out Screening for Appropriate Assessment of the project in accordance with Section 177U of the Planning and Development Act 2000 (as amended), I conclude that that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Sites within Dublin Bay namely, South Dublin Bay and River Tolka Estuary SPA, North Dublin Bay SAC, North Bull Island SPA, North-West Irish Sea SPA or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

8.1.19. This determination is based on:

- The relatively minor scale of the development and lack of impact mechanisms that could significantly affect a European Site.
- Distance from and weak indirect connections to the European sites.
- The determination of the Planning Authority, in their assessment of the proposed development that it would not significantly impact upon a Natura 2000 site.

9.0 Recommendation

I recommend that planning permission be REFUSED for the reasons and considerations as set out below.

10.0 Reasons and Considerations

1. Having regard to the size of the site and the plot ratio, density, height and scale of development proposed, the proposed development would result in overdevelopment of the site which would negatively impact on the residential amenity of existing neighbouring dwellings to the east and to the south by reason of the overbearing impact on existing dwellings. The proposed development would be contrary to the provisions of Appendix 3 of the Dublin City Development Plan 2022-2028, and would therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the prominent location of the site, to the established built form and character of Montpelier Hill and Infirmary Road, including an adjacent terrace listed on the NIAH, it is considered that the proposed development, consisting of a five-storey above lower ground floor building with a one storey setback along a significant length of the street frontage, would be incongruous in terms of its design, which would be out of character with the surrounding streetscape, and would set an undesirable precedent for future development in this area. The proposed development would seriously injure the visual amenities of the area, would be contrary to Policy QHSN10 of the Dublin City Development Plan 2022-2028, and would therefore, be contrary to the proper planning and sustainable development of the area.
3. The proposed development, by reason of its inadequate qualitative and quantitative provision of apartment floorspace and communal open space, would conflict with Sections 15.9.2 & 15.9.8 of the Dublin City Development Plan 2022-2028 and Section 3.8 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023) and would not result in a satisfactory level of residential amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Conor Crowther
Planning Inspector

4th September 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318733-23		
Proposed Development Summary	Demolition of a two storey building plus site clearance and the erection of a part five storey /part six storey building, containing 11 apartments, communal open space at roof level, office unit on two levels, bicycle and bin storage with yard and associated site works.		
Development Address	32 Infirmary Road (corner of Infirmary Road and Montpelier Hill), Dublin 7, D07 X628		
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	✓
		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		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	✓	Class 10(b)(i) and (iv)/ min. 500 dwelling units and/or an area greater than 10 ha		Proceed to Q.4
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4. Has Schedule 7A information been submitted?				
No	✓		Preliminary Examination required	
Yes			Screening Determination required	

Inspector: Conor Crowther Date: 4th September 2024

Appendix 2 - Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-318733-23	
Proposed Development Summary	Demolition of a two-storey building plus site clearance and the erection of a part five storey /part six storey building, containing 11 apartments, communal open space at roof level, office unit on two levels, bicycle and bin storage with yard and associated site works.	
Development Address	32 Infirmary Road (corner of Infirmary Road and Montpelier Hill), Dublin 7, D07 X628	
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>Given the location of the proposed development in an inner-city area where development of a similar nature has previously been permitted, I do not regard the nature of the proposed development to be exceptional in the context of the existing environment.</p>	<p>No</p> <p>No</p>
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>	<p>Given the location of the proposed development in an inner-city area where development of a similar size has previously been permitted, I do not regard the size of the proposed development to be exceptional in the context of the existing environment.</p>	<p>No</p>

Are there significant cumulative considerations having regard to other existing and/or permitted projects?		No
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?</p>	<p>I note the proximity of the River Liffey approximately 210m from the proposed development, which discharges to Dublin Bay. Having regard to the nature and scale of development, standard measures for the management and control of surface water at construction and operational stage, and SuDS measures would ensure no likelihood of any environmental effect.</p>	<p>No</p> <p>No</p>
<p align="center">Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p> <p>Yes</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p> <p>No</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p> <p>No</p>

Inspector:

Date: _____

DP/ADP:

Date: _____

(only where Schedule 7A information or EIA required)