



An  
Bord  
Pleanála

## Inspector's Report ABP-319365-24

<b>Development</b>	Demolition of structures, construction of 22 bedroom hotel extension, retention of alterations with all associated site works
<b>Location</b>	Ashton's Pub, 11 Vergemount, Clonskeagh Road, Dublin 6
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	5046/23
<b>Applicant(s)</b>	Greenfield Ideas Limited
<b>Type of Application</b>	Permission & Retention
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Greenfield Ideas Limited
<b>Observer(s)</b>	Philip O'Reilly Eglinton Residents Association
<b>Date of Site Inspection</b>	5 <sup>th</sup> of March 2024
<b>Inspector</b>	Joe Bonner

## Contents

1.0 Site Location and Description.....	3
2.0 Proposed Development.....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports.....	6
3.3. Prescribed Bodies.....	9
3.4. Third Party Observations.....	10
4.0 Planning History.....	12
5.0 Policy Context.....	14
6.0 EIA Screening.....	19
7.0 The Appeal.....	20
7.1. Grounds of Appeal.....	20
7.2. Planning Authority Response .....	22
7.3. Prescribed Bodies.....	22
7.4. Observations.....	22
7.5. Further Responses .....	24
8.0 Assessment.....	24
9.0 AA Screening.....	38
10.0 Recommendation .....	38
11.0 Reasons and Considerations.....	39
Appendix 1 Form 1 .....	44
Appendix 2 – Appropriate Assessment Screening Determination .....	51

## **1.0 Site Location and Description**

- 1.1. The 0.1008ha site is located within and close to the southern end of the administrative boundary of Dublin City Council approximately 5.3 kilometres south of Dublin City centre and in close proximity to the Dun Laoghaire Rathdown administrative area. The site accommodates Ashtons Pub and has frontage on its western side onto a small slip road, known as Vergemount, with two means of access directly to the Clonskeagh Road (R825) to the south and west.
- 1.2. The Dodder River runs northwards along the eastern boundary of the site. A three storey apartment block abuts the southern boundary with the ground floor partially located below the level of the adjacent road as the land falls west to east towards the Dodder, further south a pair of two storey semi-detached houses and a terrace of two storey houses front onto the Clonskeagh Road to the south.
- 1.3. The vacant and cleared former Smurfit paper mill site abuts the south eastern corner of the site and has significant uninterrupted frontage onto the River Dodder to the rear/east of the site.
- 1.4. A narrow public pedestrian lane runs along the norther boundary of the site for a distance of c22m before turning northwards along the River Dodder for c235m before emerging at Brookvale Road, where pedestrians can either continue on towards Donnybrook village or cross a pedestrian bridge adjacent to the Dublin Bus Depot. An apartment development known as Riverside Walk is located to the immediate north of the site and due to the sloping nature of the site, it reads as two storey when viewed from the road/west/south and three storey along the riverside.
- 1.5. Ashtons consist of the existing public house on the northern part of the site, which is single storey at the front and two storey at the rear, with ground levels dropping by more than 3m from west to east. As well as being accessible from the interior of the building, a gated pedestrian access provides access to a raised terrace along the river/eastern side of the site, at the same level as the lower ground floor of the premises. A relatively recently constructed wall is built along the sites boundary with the River Dodder, while a watertight gate is installed close to the sites northeastern boundary, that would be closed in the event of flooding in the Dodder.

## 2.0 Proposed Development

2.1. The development includes elements of permission and retention, which are described in the public notices as.

2.2. Permission for:

- a) The demolition of:
  - (i) recent (unauthorised) west walls to the carpark;
  - (ii) timber-framed, glazed, garden room at lower ground floor (220sqm), roof profile to be modified as required at b) below; and
  - (iii) a previously existing roofed outdoor seating area at upper ground floor level (51sqm);
- b) The construction of a five-storey extension (1395sqm) to the south part of the existing two-storey building, containing public house/restaurant on lower and upper ground floors and boutique hotel bedrooms on first, second and third floors. Bedrooms to be provided with balconies/terraces facing east and west; public house/restaurant to have terraces facing east at both levels. Ancillary services to include waste storage at lower ground level with service lift to upper ground floor level (street level);
- c) Enclosed plant room to rear (east) on roof of existing public house (first floor level);
- d) Associated hard and soft landscaping, including drainage and works to public sewer and 8 No. of cycle parking spaces.

2.3. Retention Permission is sought for:

- e) Alterations to the west (front) façade to provide two no. shopfronts with names over, and two storey extension (21sqm per total) to the rear, facing east;
- f) New window to east elevation, lower ground floor;
- g) Steel pedestrian gate at north-east corner of site.

2.4. The application included the following documents:

- Planning Report

- Engineering Services Report (addressing existing and proposed foul effluent and surface water). It also includes a Flood Risk Assessment and a Stormwater Management Plan
- Appropriate Assessment Screening Report.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. The planning authority issued a split decision on the 23<sup>rd</sup> of February 2024 and decided to grant permission for parts e) and f) as per the public notice above, being retention of:

- Alterations to the west (front) façade to provide two no. shopfronts with names over two storey extension (21sqm per total) to the rear, facing east; and new window to east elevation, lower ground floor.

3.1.2. Two conditions were attached, one being the attachment of a Section 48 development contribution.

3.1.3. Permission was refused for parts a), b) and g) and are described in the refusal as:

- Demolition of (i) recent (unauthorised) west walls to the carpark; (ii) timber-framed, glazed, garden room at lower ground floor (220sqm), roof profile to be modified as required; and (iii) a previously existing roofed outdoor seating area at upper ground floor level (51sqm)
- Construction of a five-storey extension (1395sqm) to the south part of the existing two-storey building, containing public house/restaurant on lower and upper ground floors and boutique hotel bedrooms on first, second and third floors.
- Steel pedestrian gate at north-east corner of site

3.1.4. The single reason for refusal stated:

1. Having regard to the Z1 zoning objective, as set out in the Dublin City Development Plan 2022-2028 for the area, the location of the site within the River Dodder Conservation Area and to the scale of the development, it is considered that the proposed development would lead to a significant

intensification of the existing use, would have a detrimental impact on the residential amenities of existing residents in the area, by reason of additional levels of noise and disturbance. Furthermore it is considered that the development is a visually obtrusive form of development in relation to its bulk and scale which would set an undesirable precedent for similar developments and would seriously injure the amenities of the River Dodder Conservation Area. The applicant has failed to provide for an ecological assessment of the development or compliance with policies G114, G115 and policy G118 of the Dublin City Development Plan. The proposed development would therefore, by itself and by the precedent it would set for other development, be contrary to the provisions of the Dublin City Development Plan 2022-2028 and be contrary to the proper planning and sustainable development of the area.

- 3.1.5. No reference is made in either the grant or refusal to parts c) which refers to a plant room, or to part d), which refers to associated landscaping, bicycle parking, drainage and sewer works.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Report**

- It outlines relevant development plan policies, sites specific and adjacent planning history, and summarises third party observations, as well as internal and prescribed bodies reports.
- This is a follow on application from the previous refusal under P.A. Reg. Ref. 5044/22, where permission was refused.
- The proposed 4/5 storey extension would be built in place of the existing unauthorised structures.
- The applicant notes the height would be 4 storey above street level, similar to that permitted at the Smurfit Paper Mills, where the board considered that a 4 storey with setback penthouse level was not excessive, given the proximity to the city and public transport.
- The P.A. has serious concerns about the impact of the large extension on amenities, as it would facilitate an enlargement of the existing public house, between two apartment developments and adjacent to the Dodder.

- The significant outdoor seating and terraces would significantly increase noise and general disturbance providing for significant intensification of the pub.
- While sub threshold for EIA an Ecological Impact Assessment has not been submitted as required by Policy GI14 'Ecological/Wildlife Corridors'.
- The applicant has failed to demonstrate compliance with Policy GI15 regarding the protection of inland fisheries.
- The applicant has failed to show that they had regard to Policy GI18 on the requirement to minimise impacts of light and noise at this sensitive location.
- The Department of Housing required further information regarding a bat roost survey and light spillage as per Policy SI42.
- The proposed building dominates vistas and towers over adjoining sites.
- The applicant refers to the soon to be expired Smurfit Mills redevelopment, but that was a much larger re-development and predates the current development plan, whereas this is the redevelopment of a small carpark.
- The scale of redevelopment in the carpark, which the planning authority is not opposed to, needs to be cognisant of the existing environs and be accompanied by appropriate environmental assessments. The applicant has failed to take these issues into account and presented a crude approach to bulk, scale, massing and design, using Smurfit Mills as a precedent.
- Drainage Division and Transportation Planning are seeking further information.
- The P.A. has screened the proposal for Appropriate Assessment (AA) and concluded that Stage 2 AA is not necessary.
- The need for EIA can be excluded at preliminary screening and a screening determination is not required.

### Conclusion

- There are serious concerns about impacts on neighbouring sites and the River Dodder, while the development would be contrary to the Z1 zoning.

- The scale, mass and design would have a significant impact on the conservation area and has not shown compliance with Policies GI14, GI15 and GI18.
- The planning authorities split decision is consistent with the planning officer's recommendation.

### 3.2.2. Other Technical Reports

3.2.2.1. Transportation Planning – 12<sup>th</sup> of February 2024 – Summarises the traffic related observations. The proposal would remove the 7 existing on-site car parking spaces, which is acceptable as the site is parking Zone 2, subject to suitable transport alternatives. Recommended further information

- 1) clarify the location of the pedestrian gate and the land ownership;
- 2) provide measures to inhibit vehicular access at the open space at the front of the hotel i.e. bollards/planting;
- 3) provide a servicing strategy. A 1.8m footpath to be provided along the entire site frontage, as well as an indented loading bay also to be included with the development set back to facilitate them. Revise the red line to include these measures and get consent from the planning authority;
- 4) Staff bicycle parking to be provided in accordance with Table 1 of Appendix 5 to the development plan.

3.2.2.2. Archaeology Section – 8<sup>th</sup> of February 2024 – Groundworks associated with the proposed lower ground floor level and combined sewer may impact subsurface remains of the tail race associated with historic iron works and weirs (refer to Section 11.5.3 and Policy BHA15) and on walls associated with the River Dodder. No objection subject to a detailed condition requiring Archaeological Assessment, a method statement, a detailed impact statement if material is present, and excavation and or preservation in situ if necessary, detailed reporting requirements during excavation and details of a final report.

3.2.2.3. EHO – 23<sup>rd</sup> of January 2024 – No objection subject to the following conditions.

- 1) Construction and Demolition Management Plan and hours of work.



- 2) Operational Noise Control.
- 3) Operational Air Quality Control.

3.2.2.4. Drainage Division – 2<sup>nd</sup> of February 2024 – Further information recommended:

- 1) provide clarity on the proposed flood mitigation measures to minimise flood risk, particularly at lower ground floor level.
- 2) outline emergency plan to describe how extreme flood events would be managed.
- 3) demonstrate that the raising of the ground at the rear of the site adjacent to the OPW/DCC flood wall has no adverse impact on the structural or functional integrity of the flood wall. Confirm that appropriate designed Health and Safety risk assessment has been carried out for these works.
- 4) Consult with Drainage Division.

### 3.3. **Prescribed Bodies**

3.3.1. Department of Housing, Local Government and Heritage – 2<sup>nd</sup> of February 2024 – Heritage related observations are:

- The application does not include an Ecological Impact Assessment (EclA) to address possible effects on fauna in the River Dodder corridor, that are not associated with European sites addressed in the AA Screening Report. Therefore no mitigation has been proposed.
- The River corridors is recognised in the development plan, with Policies GI2 'Connectivity', GI14 'Ecological/Wildlife Corridors' and GI29 'Protect Character of River Corridors' relevant.
- Protected bats and otters are the species most likely to be affected, and their usage of this part of the Dodder may be reduced as a result of increased light emitting from the hotel and pub extension.
- 2021 (Smurfit site) and 1991 (DCC) surveys identified otters nearby, while 2018, 2019 and 2021 surveys identified bats in the area. To allow free movement of Daubenton's Bat, along the river corridor it is important that light spill into the river corridor is minimised as far as possible.

- It is possible that some bats roost in Ashtons pub.
- Policy SI42 'Light Pollution' is relevant.

The following further information was recommended, although it is written as if it were conditions, as each request has a stated reason attached:

- Carry out a bat roost survey of the existing building, and if present, a licence to be obtained if required to destroy or interfere with the roost.
- Lighting designs to be in accordance with Guidance Note 08/18: Bats and Artificial Lighting in the UK, and to be signed off by a bat specialist.
- Willows or alders, as well as shrubs to be planted along the riparian strip between the site and the river, to minimise the impact of light and to provide cover for otter and other Habitats Directive protected species.

3.3.2. Uisce Éireann – 26<sup>th</sup> of January 2024 – To ensure the structural or functional integrity of the 1090mm x 700mm combined sewer that crosses under the proposed development is not endangered, further information is recommended:

- 1) consult with Uisce Eireann about the need to build over, alter or divert their asset.
- 2) Submit the build over or diversion agreement to the planning authority.

### 3.4. **Third Party Observations**

A number of third party observations were submitted. Two of the observations also form the basis of observations on the appeal and are addressed in section 7.4 below. However, the other observations address other issues that do not form part of the observations on the appeal, so are set out below:

- Fails to address many issues raised in the previous application.
- Negative impact on conservation area due to scale.
- Lack of environmental and biodiversity assessments regarding the river Dodder corridor.
- It is understood that two-thirds of the buildings on site are illegal and have been ordered to be removed. The application should make it clear that it is using illegal buildings as the baseline for the proposed development. Other

unauthorised development is in the form of signage and timber structures touching the Millrace.

- Previous development refused under 5044/22 is small scale compared to this proposal for a 5 storey development, which is an inappropriate intensification.
- Overlooking, overbearing, sunlight and daylight don't seem to have formed part of the design. It will overlook and cause a loss of privacy at Millrace and Riverside Walk and would be a bad neighbour, contrary to the Z1 zoning objective as it would not protect or improve residential amenities.
- Section 15.5.2 of the development plan 'infill development' states that development must respect and enhance the context and integrate with surroundings. This proposal is neither.
- Does not accord with 15.5.3 of the development plan as alterations should be sensitively designed and detailed to respect the character of existing buildings, and the privacy and amenities of existing occupiers.
- Applicant dismissed need to reasonably protect existing residential amenity and established character of the conservation area and does not appropriately respond to established character, layout, pattern, form or density.
- 22 bedrooms require 8 parking spaces (section 8.5.7 of development plan). Hospitality floor space would increase from 250sqm to 555sqm, creating additional demand. Zero parking would lead to overspill onto adjoining streets.
- Inconsistent with NPO's 4, 13, 34 and 35 of the National Planning Framework.
- A modest proposal would be acceptable but this is overdevelopment.
- Significant overbearance due to proximity of proposed rear terrace, which would increase overlooking and noise. The substantial increase in outdoor seating is unwarranted and unreasonable and noise and overlooking from it cannot be mitigated.
- It would make adjacent properties less attractive to potential buyers and seriously devalue them.

## 4.0 Planning History

### 4.1. Application site

- 4.1.1. **P.A. Reg. Ref. 5044/22** – Retention permission REFUSED on the 6<sup>th</sup> of December 2022 for a) Alterations to the west (front) facade to provide two no. shopfronts with names over and replacement of previously existing canopies; alterations to the front door including a change of level to eliminate a step; and the provision of planters/enclosure to previously used outdoor dining area; b) the construction of new west walls to the carpark; c) the reconstruction of a previously existing roofed outdoor seating area at upper ground floor level (45sqm) / open service yard; d) an open sided roof covering to an outdoor seating area (140sqm) at garden level (lower ground floor); e) enclosure of lower ground floor area, including a chiller room (38sqm); f) two storey extension (13sqm per total) to the rear (east), facing the River Dodder; g) new window to east elevation lower ground floor , h) steel pedestrian gate at north-east corner of site.

The reason for refusal stated:

- 1 Having regard to the Z1 zoning objective, as set out in the Dublin City Development Plan 2016-2022 for the area, the location of the site within the River Dodder Conservation Area and to the scale of the development, it is considered that the development to be retained would lead to a significant intensification of the existing use, would have a detrimental impact on the residential amenities of existing residents in the area, by reason of additional levels of noise and disturbance. Furthermore it is considered that the development is a visually obtrusive form of development which would set an undesirable precedent for similar developments and would seriously injure the amenities of the River Dodder Conservation Area. The proposed development would therefore, by itself and by the precedent it would set for other development, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and be contrary to the proper planning and sustainable development of the area.

- 4.1.2. **P.A. Reg. Ref. 2461/06** – Permission REFUSED on the 15<sup>th</sup> of August 2006 for installation of 2 no flag poles and flags and ground recessed uplighters to plant

troughs adjacent to the building front elevation. At that time there were no timber structures on the site.

#### **4.2. Nearby History**

##### **Site c75m to the north**

- 4.2.1. **ABP-314166-22 (P.A. Reg. Ref. 3129/21)** – Permission GRANTED on the 8<sup>th</sup> of December 2023 for alterations to apartment block to include change to fire escape, extensions, provision for additional storey, increase to 28 apartments and all associated site works.

##### **Smurfit Site to south**

- 4.2.2. **P.A. Reg. Ref. 2620/14** – Permission GRANTED on the 11<sup>th</sup> of March 2015 to demolish existing factory buildings and construct 88 (92 originally sought) no. apartment in 4 blocks up to 4 storey in height, and crèche, 134 no. car parking spaces and 100 no. cycle spaces.
- 4.2.3. **PL29S.247062 (P.A. Reg. Ref. 2308/16)** – Permission GRANTED by the board on the 30<sup>th</sup> of December 2016 to amend previous permission (Reg. Ref.2620/14), increase apartments from 88 to 97, widen access and 27 additional parking spaces.
- 4.2.4. **ABP-300024-17 (P.A. Reg. Ref. 3159/17)** – Permission GRANTED by the board on the 4<sup>th</sup> of July 2018 for an increase in apartment units from 96 to 116 with increase in block heights from 3 to 4 storeys with 30 additional parking spaces and additional bicycle spaces & associated site works as an amendment to P.A. Re. Ref. 2308/16.

##### **Houses between Paper Mill and Clonskeagh Road**

- 4.2.5. **P.A. Reg. Ref. 2477/17** – Permission GRANTED on the 8<sup>th</sup> of August 2017 for alterations and extensions to 14 of the houses located to the south of the application site, along Clonskeagh Road.

##### **Clonskeagh House c200m south of site**

- 4.2.6. **ABP-300024-17 (P.A. Reg. Ref. 2588/18)** – Permission REFUSED on the 15<sup>th</sup> of January 2019 for demolition of existing bar & the development of 39 no. bedroom guesthouse across basement to 4<sup>th</sup> floor as well as kitchen, staff facilities and storage at basement level; receptions, bar, restaurant, toilets and ancillary storage at ground floor level, for the following reason:

- It is considered that the proposed development, located adjoining and encroaching upon lands zoned Z9 - 'to preserve, provide and improve recreational amenity and open space and green networks' would, by reason of its design approach, scale and form, be visually obtrusive and result in overdevelopment of the site and would not respect or enhance the sensitive character or the context of this prominent site. The proposed development would, therefore, seriously injure the visual amenities of, and detract from the character of, the area and would be contrary to the proper planning and sustainable development of the area.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2022-2028

5.1.1. The Dublin City Development Plan 2022-2028 came into effect on the 14<sup>th</sup> of December 2022. The site is zoned 'Z1' the objective for which is 'to protect, provide and improve residential amenities' and 'Hotel' 'Public House' and 'Restaurant' are 'open for consideration' in this zone.

5.1.2. Section 14.3.1 states that 'An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.

#### Chapter 4 - Shape and Structure of the City

5.1.3. Policy SC23 Design Statements' states 'that Design Statements shall be submitted for ...commercial development proposals (+1,000 sq. m.) in accordance with the principles set out in Chapter 15'.

#### Chapter 6 – City Economy and Enterprise

5.1.4. Policy CEE26 'Tourism in Dublin seeks 'to promote and facilitate tourism as one of the key economic pillars of the city's economy and a major generator of employment' and 'to improve the accessibility of tourism infrastructure.

5.1.5. Policy CEE28 'Visitor Accommodation' sets out the matters to be considered in applications for additional hotel developments including having regard to the existing character of the area and the impact of additional visitor accommodation on

residential functions and the need to prevent an unacceptable intensification of activity, particularly in predominantly residential areas.

#### Chapter 8 - Sustainable Movement and Transport

- 5.1.6. Section 8.5.7 refers to the need to control and manage on-street parking, while Appendix 5 sets out parking standards for various land uses. The site is in Parking Zone 2 here hotels have a maximum requirement of 1 space per 3 rooms and pubs have 1 space per 300 sq. m. NFA (net floor area).
- 5.1.7. Policy SMT26 'Commuter, Shopping, Business and Leisure Parking' seeks 'To discourage commuter parking and to ensure adequate but not excessive parking provision for short-term shopping, business and leisure uses.'

#### Chapter 9 - Sustainable Environmental Infrastructure and Flood Risk

- 5.1.8. Chapter 9.5.9 'Public and External Lighting' states that 'lighting of external areas and of buildings should be designed to minimise the impact on protected species, such as light sensitive bat species in accordance with best practice and industry standards, the Technical Guidance Note on Biodiversity for Development Management in Dublin City (DCC 2021) and the National Parks and Wildlife Service (NPWS) Bat Mitigation Guidelines for Ireland (2006)'.
- 5.1.9. Policy SI10 'Managing Development Within and Adjacent to River Corridors' state that it is policy 'To require development proposals that are within or adjacent to river corridors in the City (excluding the Camac River) to provide for a minimum set back distance of 10-15m from the top of the river bank in order to create an appropriate riparian zone. The Council will support riparian zones greater than 10 metres depending on site-specific characteristics and where such zones can integrate with public/communal open space.
- 5.1.10. Policy SI42 'Light Pollution' states it is policy 'to not allow unnecessary, inappropriate or excessive artificial lighting and to ensure that the design of public and external lighting proposals minimises light spillage or pollution and has due regard to the character, environmental sensitivity and residential amenity of the surrounding area.

#### Chapter 10 - Green Infrastructure and Recreation

- 5.1.11. Policy GI10 'Flora and Fauna Protected under National and European Legislation Located Outside Designated Areas' seeks 'to adequately protect flora and fauna (under the EU Habitats and Birds Directives), the Wildlife Acts 1976 (as amended),...

wherever they occur within Dublin City, or have been identified as supporting the favourable conservation condition of any European sites.

- 5.1.12. Policy GI14 'Ecological / Wildlife Corridors' seeks 'To maintain and strengthen the integrity of the city's ecological corridors and stepping stones which enable species to move through the city, by increasing their connectivity [to be shown in the proposed Green Infrastructure Strategy] under Article 10 of the EU Habitats Directive. Development proposals should not compromise their ecological functions and should realise opportunities to contribute to enhancing the nature conservation value of them by landscaping that provides complementary habitats. An Ecological Impact Assessment will be required for any proposed development likely to have a significant impact on habitats and species of interest on or adjacent an ecological corridor.
- 5.1.13. Policy GI15 'Inland and Sea Fisheries' seeks 'to protect inland and sea fisheries and take full account of Inland Fisheries Ireland Guidelines 'Planning for Watercourses in the Urban Environment' 2020, when undertaking, approving or authorising development or works which may impact on rivers, streams, watercourses, estuaries, shorelines and their associated habitats....
- 5.1.14. Policy GI18 'Minimise Impact – Light and Noise' seeks 'to minimise the environmental impact of external lighting and noise at sensitive locations to achieve a sustainable balance between the needs of an area, the safety of walking and cycling routes and the protection of sensitive species such as bats (see also Section 9.5.9 Public & External Lighting)'. (refer to Paragraph 5.1.89 above).
- 5.1.15. Policy GI29 'Protect Character of River Corridors' seeks 'to protect, maintain, and enhance the watercourses and their river corridors in the city and to ensure that development does not cover or encroach upon rivers and their banks. To maintain natural river banks and restore them as part of any new development. The creation and/or enhancement of river corridors will be required and river restoration opportunities where possible will be supported to help improve water quality, and ecology, provide natural flood relief as well as providing amenity and leisure benefits'.

#### Chapter 11 – Built Heritage and Archaeology

- 5.1.16. Section 11.5.3 'Built Heritage Assets of the City' addresses development in Red-Hatched Conservation Areas. It states that 'the special interest/value of Conservation



Areas lies in the historic and architectural interest and the design and scale of these areas' and that 'the City Council will encourage development which enhances the setting and character of Conservation Areas.'

5.1.17. Policy BHA9 provides that development within a 'Conservation Area' must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. Enhancement opportunities may include

1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.
4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area
5. The repair and retention of shop and pub fronts of architectural interest.

5.1.18. Policy BHA17 'Industrial Heritage of Waterways, Canals and Rivers' seeks 'to support and promote a strategy for the protection and restoration of the industrial heritage of the city's waterways, canals and rivers, including retaining features such as walls, weirs, millraces, ...'.

#### Chapter 12 - The City Centre, Urban Villages and Retail

5.1.19. Objective CUO38 'New Development' seeks 'to support uses that would result in the diversification of the evening and night time economy where there is little impact on the amenity of adjoining or adjacent residential uses through noise disturbance and where there are no negative cumulative impacts in terms of other night-time economy uses in the area.

#### Chapter 14 - Land Use Zoning

5.1.20. Section 14.5 'Non-Conforming Uses' states that 'Throughout the Dublin City Council area there are uses that do not conform to the zoning objective for their area. All such uses, where legally established (the appointed day being 1 October 1964) or where in existence longer than 7 years, shall not be subject to proceedings under the Planning and Development Act 2000 (as amended) in respect of the continuing use. When extensions to, or improvements of, premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of

premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.

#### Chapter 15 - Development Standards

- 5.1.21. Section 15.5.2 refers to 'Infill Development' being lands between or to the rear of existing buildings capable of being redeveloped. It states that 'Infill development should complement the existing streetscape, providing for a new urban design quality to the area. It is particularly important that proposed infill development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape' and is required 'to respect and complement the prevailing scale, mass and architectural design in the surrounding townscape'.
- 5.1.22. Section 15.5.3 refers to 'Alterations, Extensions and Retrofitting of Existing Non – Domestic Buildings' and states that 'Dublin City Council will seek to ensure that alterations and extensions will be sensitively designed and detailed to respect the character of the existing building, its context and the amenity of adjoining occupiers'.
- 5.1.23. Section 15.7.5 refers to shopfront and façade design.
- 5.1.24. Section 15.9.18 refers to 'Overlooking and Overbearance'.
- 5.1.25. Section 15.14 is titled 'Commercial Development/Miscellaneous' and includes hotels.
- 5.1.26. Section 15.14.1 addresses 'Hotels and Aparthotels', and states that they will be dealt with on a case by case basis, pending the outcome of an analysis of the supply and demand for tourism related accommodation in the Dublin City area (to be carried out by Dublin City Council), but has not yet been carried out, while 15.14.1.1 specifically addresses 'Hotel Development' and states that applications should be accompanied by operational management plans and servicing details.
- 5.1.27. Table 15.1 addresses 'Thresholds for Planning Applications' and specifically requires hotel developments and commercial developments with floor areas over 100sqm in some instances and 1000sqm in others, to provide particular documents. These documents are addressed in the assessment
- 5.1.28. Section 15.15.2.2 'Conservation Areas' provides that all planning applications for development in conservation areas shall:
- Respect the existing setting and character of the surrounding area.
  - Protect the amenities of the surrounding properties and spaces.

- Positively contribute to the existing streetscape.

5.1.29. Table 2 of Appendix 3 addresses 'Plot Ratio and Site Coverage' and provides that in Conservation Areas the indicative Plot Ratio is 1.5-2.0 and the Indicative Site Coverage is 45-50%.

## 5.2. Natural Heritage Designations

5.2.1. The nearest Natura 2000 sites are those in the Dublin Bay area being South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) and South Dublin Bay SAC (Site Code:000210), c2.17km to the east in a direct line and c6.33km hydraulically via the River Dodder and River Liffey.

## 6.0 EIA Screening

6.1.1. I have carried out an EIA Pre-Screening) and a Preliminary Examination (see Form's 1 and 2 in Appendices 1 and 2 to this report). I have concluded that having regard to:

- 1) The absence of detail regarding how it is proposed to install the new combined sewer beneath the existing brick culvert combined sewer, while at the same time keeping the existing culvert in operation,
- 2) To the absence of an agreement with Uisce Éireann to build, over, alter or divert the existing culvert, and;
- 3) The proposal to install secant piles along the southern site boundary, immediately adjacent to the Millrace apartment development and along the eastern site boundary in close proximity to the Dodder Flood Relief wall and to the absence of any information on the file regarding the nature and/or extent of the foundation depths or foundation type for the Millrace and flood relief wall, and to the absence of any assessment of the impact of the proposed development on the structural integrity of both structures or to the absence of any assessment of potential changes in local groundwater flows and impacts on the Millrace and the flood relief wall, as a result of the installation of the secant piles;

I am not satisfied that there is no potential for significant effects on the environmental factors set out in Section 171A of the Planning and Development Act 2000 (as amended) (human health) having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended).

## 7.0 The Appeal

### 7.1. Grounds of Appeal

#### 7.1.1. Pedestrian gate

- The gate will be relocated within the site.

#### 7.1.2. Planning Report

- The Planning Officer's conclusion states the proposed development would be contrary to the 'Z1' zoning objective. The applicant disagrees as hotel use is open for consideration, while the pub use on site is an existing non-conforming use that predates the planning acts. The definition of nonconforming use says planning permission may be granted where it does not adversely affect the amenities of premises in the area.

#### 7.1.3. Urban Design

- Rejects the planning officer's dismissal of the Smurfit precedents just because they are due to expire.
- Asks the board to accept that it is likely and desirable that large scale residential of a comparable height, will eventually be developed on the Smurfit site.

#### 7.1.4. Noise

- The proposed lower ground level food and beverage room, which would have a seating area of about 100 square metres, is a natural extension to a restaurant at that level, which has existed for approximately 25 years.
- The new room would replace an open air pergola type structure, which in turn replaces a garden available to use by patrons without restriction.
- The enclosure of the space by a roof and walls will have the effect of reducing possible noise overspill.
- The new street level balcony at the rear is similar to a terrace at 55 Percy Place.
- It is in the applicants interest to ensure noise is kept to levels acceptable to its own guests.

#### 7.1.5. Ecology

- The planning authority considers the development would seriously injure the amenities of the River Dodder Conservation Area. However, the objectives of the conservation area are primarily related to visual amenity and the visual impact on the riverside is no more significant than dozens of other developments including that permitted on the Smurfit site.
- With respect to ecology and GI14, GI15 and GI18, the DoHLGH makes three further information recommendations, none of which are a refusal. The first two could be addressed by condition and the third referring to the land on the riverside of the wall is outside of the applicants control but the would be happy to implement a landscaping scheme on the riverbank in co-operation with the appropriate authority.
- The proposed development would have a negligible effect on the natural environment and its banks which experienced large scale industrial activity for more than 200 years.
- The board is asked to compare the effects on the environment in the context of three nearby developments being 1) Dodder Greenway downstream of Anglesey Bridge; 2) Flood Protection works at Beaver Row, and; 3) Office building at Eglinton Road/Annesley Bridge.

#### 7.1.6. Conclusion

- The planning authority is not against the principle of development and does not suggest that parking is required or that there would be difficulties with deliveries and waste collection.
- It is common ground that development need not have an adverse effect on the ecological environment, other than possible disturbance to bats if any are found to be present.
- The substantive reason for refusal relates to concerns about visual impact due to scale, and nuisance to neighbours caused by noise.
- With respect to height, in P.A. Reg. Ref. 3386/22 (Eglinton Road development), the planning authority note that increased height and density needs to be not only facilitated but actively sought out.
- While the existing longstanding business generates some noise, the increased generation by additional numbers of patrons would be minimal. Kitchen ventilation

currently discharged at car park level will be extended to roof level in the centre of the site, away from boundaries and will incorporate enhanced noise reduction and odour control technology.

- Most patrons travel to pubs and restaurants by foot or bike, not by car, while hotel patrons will invariably travel by taxi and not generate demand for on-street parking.
- The Devlin Hotel in Ranelagh, operated by the same group, has a rooftop restaurant and terrace and street level lounge/cocktail bar and a small cinema.
- The applicant has experience operating a number of venues in the city and know how to manage noise levels to the satisfaction of neighbours and guests.

## **7.2. Planning Authority Response**

- Requests that the board upholds its split decision. If permission is granted a Section 48 development contribute should be applied.

## **7.3. Prescribed Bodies**

- 7.3.1. The board invited submissions from 1) An Taisce; 2) The Heritage Council; 3) Waterways Ireland; 4) Inland Fisheries Ireland; as it was of the opinion that the proposed development may affect the River Dodder Conservation Area. No responses were received in respect to the invitation.

## **7.4. Observations**

- 7.4.1. Two observations were received on the appeal and are summarised below.

### **7.4.2. Policy**

- The site is zone Z1, the objective of which is to protect existing residential amenity and while hotel use is 'Open for Consideration', it would only be considered acceptable, if there is no adverse impact on neighboring amenity.
- The site is in a Conservation Area, so Policy BHA9 needs to be considered.
- The riverbank, riparian corridor, climate change and impacts on biodiversity loss need to be considered.

### **Hotel Proposal**

- Other than car parking the current use poses no issues, but the intensification would have noise and traffic impacts for residents.
- Plot Ratio and Site Coverage, at 1.79 and 71% appear quite high. A fourfold increase in floor area from 586sqm to 1,963sqm could be considered excessive.
- No structure in the area is greater than three storeys and the proposal is sited between two well established 3 storey apartment blocks and near to an expired permission for the redevelopment of the Smurfit Paper Mills.
- The proposal is too big and tall and would dominate the 3 storey apartments to the South that is 2 storeys above ground level.
- No attempt is made to assimilate the development, in terms of design, height, bulk, character or setting. It is of an inappropriate design and would be a serious overdevelopment with no regard to its surroundings. It would overshadow, overwhelm and overbear surrounding residences in terms of noise, intensification and inappropriate use, as well as overlooking and affecting privacy.
- It would destroy the residential, architectural and visual amenity of the area.

#### Impact on Ashtons

- Ashton's has always stood as a standalone single storey building. Tacking on an inappropriate and oversized development, with no separation would overwhelm and destroy the balance and setting of Ashtons, which is itself of significant architectural and historic interest.

#### Retention element

- The gate is outside of the red lined site boundary and should be removed and the enclosed land should be returned to the public.

#### Precedents

- Permission has previously been refused on this site. so retention should not be permitted.
- The developments permitted on the Smurfit site are wholly inappropriate and should not be used as precedents. Those applications never had regard to the established character and scale of the area.

- The development would be substantially higher than existing buildings by 6m. The cited precedent in Ranelagh is in a village streetscape and is 1 floor lower, but is also inappropriate and adds nothing to the village.
- Residential developments built 40 years ago to the northeast of Ashtons respects the setting and scale of the established built environment.

#### The Dodder

- It would adversely affect the setting of the Dodder.

### **7.5. Further Responses**

- None

## **8.0 Assessment**

### **8.1. Introduction**

8.1.1. Having examined the application details and all other documentation on file, including the information received in relation to the appeal, having inspected the site, and having regard to relevant planning policies, I am satisfied that the main issues in this appeal can be dealt with under the following headings:

- Reports required, included and not included in the application and appeal
- Principle of Development
- Impact on Residential Amenity
- Ecology
- Conservation Area
- Other Matters

### **8.2. Reports required, included and not included in application and appeal**

8.2.1. When preparing a planning application, an applicant will invariably review the development plan to determine what supporting documentation may or may not be required. Table 15-1 of the Dublin City Development Plan has set out clearly the nature of reports that are required when particular thresholds are exceeded.



8.2.2. The proposed development including an extension to the existing public house and restaurant and the development of a 22 bedroom hotel is clearly a commercial development which would have an additional 1,395sqm of floor area over and above the existing floor area

8.2.3. Table 15.1 specifically requires that applications for hotel developments include:

- 1) Operational Management Plan;
- 2) Service Delivery and Access Strategy;
- 3) Mobility Management Plan / Travel Plan (as zero parking is proposed); and
- 4) Noise Assessment.

None of these four documents have been submitted either in the original application or as part of the appeal.

8.2.4. Table 15.1 also refers to documents that must be included in applications for commercial development of more than 1,000sqm and as the proposed development is for an extension of 1,395sqm, it was accompanied by the following two documents

- 5) Planning Report;
- 6) Engineering Services Report (Civil)

8.2.5. However, none of the following documents, which are required to be submitted with applications for commercial development of more than 1,000sqm were included in the application or appeal

- 7) Engineering Services Report (Structural)
- 8) Construction Management Plan
- 9) Construction Demolition Waste Management Plan
- 10) Operational Waste Management Plan
- 11) Climate Action and Energy Statement (including District Heating)

8.2.6. While the application was accompanied by

- 12) An Appropriate Assessment Screening Report

the submission of the DoHLGH referred to the likely impacts of the proposed development on bats and otters (i.e. fauna not associated with European sites) and the refusal reason specifically referred to the absence of an

- 13) Ecological Impact Assessment (EclA)

as required by Policy GI14 'Ecological / Wildlife Corridors' of the development plan. The appeal did not include an EclA.

8.2.7. It is evident by reference to the preceding paragraphs that the applicant has not provided 10 of the 13 documents deemed necessary by the planning authority for a development of this scale. Those documents would have assisted the planning authority in the first instance and the board in assessing this appeal and I will address their absence in more detail below. A number of those reports would also have assisted and informed the preparation of the applicant's Appropriate Assessment Screening Report.

8.2.8. The drainage division also recommended that an outline emergency plan for flooding be submitted, but it was not sought as the planning authority decided to refuse permission. In addition, Policy SI42 refers to lighting design proposals, which are also absent from the application, while Section 15.15.2.2 requires all planning applications for development in Conservation Areas to provide for an assessment of the visual impact of the development in the surrounding context, which has not been provided.

### **8.3. Principle of Development**

8.3.1. The proposed development consists of three separate elements being 1) retention of unauthorised works and development (parts e, f and g in the public notices); 2) permission for demolition of a wall and two timber structure (none of which appear to have a grant of permission); and 3) permission for a 5 storey extension 1395sqm. I will deal with elements 1 and 2 below and with the principle element 3.

#### **8.3.2. Retention elements subject to grant from planning authority**

8.3.2.1. The planning authority decided to grant retention permission for parts e) and f) of the public notice, which are e) alterations to the west (front) façade to provide two no. shopfronts with names over two storey extension (21sqm per total) to the rear, facing east; and f) new window to east elevation, lower ground floor.

8.3.2.2. I have inspected these elements of the development on site, which are shown in the annotated drawings PP11 (Proposed East and North Elevations) and PP12 (Proposed River Front, West and South Elevations) and I am satisfied that both aspects of the development are acceptable. If the board is minded to grant permission I would support the decision of the planning authority to grant permission for both e) and f) as described above, subject to the attachment of appropriate conditions, including a Section 48 development contribution, which was Attached to the decision to grant permission and as requested by the planning authority in responding to the grounds of appeal.

8.3.3. Pedestrian Gate - Retention element subject to refusal from planning authority

8.3.3.1. Permission was refused for retention of the steel pedestrian gate as part g) of the public notices, however, the reason for refusal did not refer to the gate.

8.3.3.2. In the ground of the appeal, the applicant stated that the gate would be relocated within the site, which I consider to be an acceptance of the point raised by the Transportation Division and observers, that the gate was located on lands that are outside of the site boundary. On the occasion of the site visit a gate was noted, outside of the site, at point where the public footpath along the northern side of the site turns northwards to run along the River Dodder, but no gate was located where the gate that is subject to this application for retention is shown to be located on the existing and proposed floor and layout plans, i.e. at the bottom of the steps at the side the lower ground floor level of the building. I am satisfied that the gate that is in place adjacent to the site is located outside of the red lined site boundary and as there is no gate at the location shown on the submitted plans, it is not possible to grant of permission for this element of the proposed development.

8.3.4. Demolition element - refused permission

8.3.4.1. Permission was also refused for part a) which refers to demolition of a wall and two timber building, with a combined floor area of 271sqm, although the planning assessment does not specifically express any concern about the demolition element, but focuses on the proposed replacement structure.

8.3.4.2. The planning officer notes that the proposed development b) would replace the unauthorised structures referred to in a). The planning assessment also states that the floor area that is subject to the proposal for demolition was not there pre-2022. The two structures are built of timber and I have no issue with them being demolished. Likewise I have no objection to the demolition of the front boundary wall. The demolition of the buildings and wall forms part of the overall development for permission as per b), c) and d) and they are unlikely to be demolished on foot of a grant of permission unless permission is granted for the new 5 storey replacement building. I note that observers on the appeal have stated that they were of the understanding that these structures were subject to a requirement to be demolished, but they have not provided any evidence to support this statement nor has enforcement been referenced in the planning authority report on the application. Should the board be minded to grant permission for the proposed extension, I am satisfied that the demolition element of the development could be addressed by way of appropriate conditions.

8.3.5. Elements of development not referenced in decision

8.3.5.1. No reference is made in the planning authority decision to parts c) and d) of the proposed development, which are for c) Enclosed plant room to rear (east) on roof of existing public house (first floor level); and d) Associated hard and soft landscaping, including drainage and works to public sewer and 8 No. of cycle parking spaces.

8.3.5.2. The application does not contain any details of the proposed nature or extent of the proposed roof plant room and while reference is made in the application to a new extractor fan being installed, no specification of same have been provided.

8.3.5.3. With respect to hard and soft landscaping, the application refers to permeable paving, but has not provided any details of the nature or type of product that would be used, while no soft landscaping proposals are shown on either the lower ground or upper ground level plans, although some plants are shown on the terraces in the proposed elevations, but are not shown on the associated floor plans. I also note that the proposal does include for green roofs, but I would not consider that to be soft landscaping.

8.3.5.4. The DoHLGH has recommended that further information be sought requiring the applicant to provide planting along the riparian strip, which is outside of the site boundary and therefore not within the applicants control. In the appeal, the applicant stated that they would be happy to implement a landscaping scheme on the riverbank in co-operating with the appropriate authority, but did indicate that they had sought to contact the relevant owner of the land to determine if such a proposal was possible and if it was not possible that they would be able to develop a lighting scheme that would not negatively affect the fauna that commute along the river corridor.

8.3.5.5. I note that the upper ground floor plan shows the location of 4 no bicycle parking space immediately adjacent to the front door of the proposed hotel, while the corresponding front elevation shows two people sitting on a bench in the same location, with no bicycle parking evident. No specifications have been submitted of either the proposed bench or bicycle parking stands.

8.3.5.6. I am not satisfied that the applicant has submitted adequate details to enable an assessment to be made in respect of parts c) and d) of the proposed development, although if the board is minded to grant permission, these elements could be addressed by way of a condition.

#### 8.3.6. Extension and Hotel Use - Refused

8.3.6.1. The planning authorities refusal reason essentially addressed part b) of the development, which is described in detail in section 2.2 and is described in the refusal reason as b) Construction of a five-storey extension (1395sqm) to the south part of the existing two-storey building, containing public house/restaurant on lower and upper ground floors and boutique hotel bedrooms on first, second and third floors.

8.3.6.2. The applicant has stated in the application and appeal that the established pub/restaurant, with a floor area of 250sqm, is a 'non-conforming use' and that the propose to increase the floor area to 555sqm, an increase of 122%.

- 8.3.6.3. In the development plan hotel, public house and restaurant are land uses that are 'open for consideration'. Section 14.5 of the development plan clearly states that 'Non-Conforming Uses' are uses that do not conform to the zoning objective for their area. The sites Z1 zoning objective is 'to protect, provide and improve residential amenities'. The applicant is therefore of the opinion that the existing 250sqm pub and restaurant does not protect or improve residential amenities so any extension thereto would likely have a similar or greater impact unless demonstrated otherwise.
- 8.3.7. An open for consideration use is one which may be permitted where the proposed development would be compatible with the overall policies and objectives for the zone and would not have undesirable effects on the permitted uses.
- 8.3.8. The key concerns of the observers on the appeal are that the development represents overdevelopment, would negatively affect their amenities and would be inconsistent with the Z1 zoning objective by reason of height, overlooking, noise, and overbearance, while it would also affect the wider area through additional and uncontrolled traffic and parking on local roads and streets.

I will address these matter and the acceptability of the proposed hotel and expanded pub restaurant uses in section 8.4 below.

#### **8.4. Impact on Residential Amenity**

##### **8.4.1. Policy**

- 8.4.1.1. The development plan contains a number of policies relating to development that would affect neighbouring amenities including Policy CEE28, which provides that additional hotel accommodation needs to consider Residential functions and the need to prevent unacceptable intensification of activity, particularly in predominantly residential areas, SI42 refers to light pollution affecting residential amenity, Section 15.5.2 infill development requires development to enhance its context and surroundings and is required to complement the prevailing scale, mass and architectural design. Section 15.5.3 requires extensions to non-domestic buildings to respect the amenity of adjoining occupiers. The entire site is located in a red lined Conservation Area and section 15.15.2.2 of the development plan provides that all applications in conservation areas shall respect the existing setting and character, protect the amenities of surrounding properties and spaces.

##### **8.4.2. Plot Ratio and Site Coverage**

- 8.4.2.1. Section 4.5.4 of the development plan states that plot ratio and site coverage all contribute to the density of a particular built form and they are addressed in Table 2 of Appendix 3 addresses 'Plot Ratio and Site Coverage' and provides that in Conservation Areas the indicative Plot Ratio is 1.5-2.0 and the Indicative Site Coverage is 45-50%. Appendix 3 also state that site coverage is a control for the purpose of preventing the adverse effects of over development, thereby, safeguarding sunlight and daylight within or adjoining a proposed layout of buildings
- 8.4.2.2. The proposed development would have a plot ratio of 1.79, which is within the appropriate range for this area. The site coverage is 71%, which I consider to be excessive for a conservation area, particularly in the context of the scale of the building relative to the adjoining buildings.
- 8.4.2.3. Appendix 3 also provides that higher plot ratio and site coverage may be permitted in certain circumstances such as 1) Adjoining major public transport corridors, where an appropriate mix of residential and commercial uses is proposed; 2) To facilitate comprehensive re-development in areas in need of urban renewal; 3) To maintain existing streetscape profiles. 4) Where a site already has the benefit of a higher plot ratio; and 5) To facilitate the strategic role of significant institution/employers such as hospitals. None of these exceptions apply to the current proposal and the applicant has not adequately justified the proposes site coverage, other than to refer to other hotels they own that they consider are acceptable precedents, without providing any specific details relating to those hotels.

#### 8.4.3. Height

- 8.4.3.1. Following on from plot ratio and site coverage, the proposal is for 5 storey over lower ground floor building, which would read as a 4 storey building from the public facing Clonskeagh road side, where it would have a maximum height of 13.97m, with the top floor set back 3.15m from the front building line. Although the setback floor reduced the perception of height, the southern elevation shows that the building would be 13.4m higher than the ground floor of the Millrace at the point where the two building would abut, while the front building line would also be set 2.15m forward of the building line of the Millrace.

8.4.3.2. The highest point of the existing Ashtons pub is 5.85m at the apex of the curved front elevation. At the rear the building would be 17.02m above the lower ground floor level.

8.4.3.3. The supporting precedent referred to by the applicant and disputed by the third parties is the previously permitted development at Smurfit Paper Mills, which is shown in the Proposed River (Front) Elevation (drawing PP12) to demonstrate that the proposed height is similar to that already permitted and in the grounds of appeal state that it is likely that similar buildings will be permitted again in the future on that site. The applicant complained that the planning authority seemed to dismiss those permissions as they were due to expire at the time. The permissions have now expired. The permissions on the Smurfit site allowed buildings of up to 5 storeys over lower ground floor along and close to the Dodder river at a time when the development plan permitted buildings of up to 16m in height. The current development plan does not restrict height in the same manner but requires proposals for taller buildings to justify the additional height. I do not consider that the proposed extension constitutes a tall building as there is already a 4 storey building c75m to the north.

8.4.3.4. With respect to the precedents at Smurfit Mills, that site is significant larger than the site of the proposed development and was set back from the road, whereas the application site is an infill site with its own particular set of circumstances, including an immediately adjacent residential development and I am not satisfied on the basis of the information submitted with the application and appeal that the development would not have a negative impact on the adjoining residents at Millrace and on the character of the conservation area by reason of height. If the board was minded to grant permission I would recommend that a condition be imposed that required the removal of either the first or second floor of the building.

#### 8.4.4. Overlooking

8.4.4.1. Observers expressed concern that the proposed development would overlooking the adjacent private open spaces. The proposed upper ground floor plan indicates that the outdoor seating area that would be substantial at 3.9m in depth and 17.53m in length would directly overlook the adjacent private open spaces at the Millrace as would a number of the bedrooms at first floor level. These open spaces are not



currently directly overlooked from the application site as rear terrace sits below the level of the Millrace. I am satisfied that the proposed development would have an unacceptable and negative impact on the amenities of surrounding properties.

#### 8.4.5. Noise

- 8.4.5.1. Table 15-1 provides that a Noise Assessment is required for any noise generating use. The applicant did not provide such an assessment and in the grounds of appeal does not address the potential impact of additional noise generate from the proposed upper ground floor terrace.
- 8.4.5.2. The proposed development also includes an expanded ground floor terrace at the front of the hotel in front of the existing car park and adjacent to the front of the Millrace apartments.
- 8.4.5.3. At the rear, the existing partially covered upper ground floor terrace and the rear external terrace do not appear to have been the subject of a grant of permission and the applicant has not provided any details of how long they have been in use, other than stating that the garden is used by patrons without restriction.
- 8.4.5.4. While in the grounds of appeal the applicant has stated the terrace at the rear is similar to one at 55 Percy Place and they indicate that it is in their interest to keep noise levels acceptable to guests, they have not provided any technical information to support their assertions.
- 8.4.5.5. In the absence of a Noise Assessment, which could have been done to determine existing noise levels, as the site is an existing premises, I am not satisfied that the proposed development, in particular, the proposed elevated terrace at the rear of the building would not have a negative impact on adjoining residential amenity by reason of increased noise and disturbance brought about by the proposed intensification of the floor area of the bar and restaurant.

#### 8.4.6. Overbearance

- 8.4.6.1. Section 15.9.18 of the development plan refers to 'Overbearance' in a planning context being the extent to which a development impacts upon the outlook of the main habitable room in a home or the garden, yard or private open space service a

home. The proposed development has potential to have an overbearing impact on the outlook of the apartments located on the eastern side of the Millrace building as the front building line would extend c2.15m beyond the building line of the Millrace. The applicant has not addressed this in the application.

#### 8.4.7. Parking and Access

- 8.4.7.1. The transportation and planning section of DCC raised a number of issues including measures to prevent vehicles parking in front of the development, the provision of a loading bay, a 1.8m wide footpath and staff bicycle parking, and I am satisfied that should the board be minded to grant permission that these matters would be addressed by way of condition.
- 8.4.7.2. The existing premises has 7 on-site car parking spaces, yet the third party observations refer to overspill parking on local residential streets from the existing development. The transportation department did not express any concern regarding the proposal for zero parking. The proposed development, which would include 22 bedrooms and an enlarged hospitality area, projects an increase of capacity for pub patrons from 100 to 141 per day with meals projected to increase from 200 to 461 per day.
- 8.4.7.3. Table 15-1 of the development plan requires the submission of a Mobility Management Plan/Travel Plan for all developments where zero parking is proposed. This is just one of a number of required reports that have not been submitted and I note that the site is not served by a high frequency bus service or a planned Bus Connects service, with the nearest high frequency bus service being in Donnybrook village, c600m from the site on foot. The site is served by the no 11 that has general frequency of 30 minutes with a minimal amount of 10 and 15 minute services southbound from 7am to 9am on weekdays, but it has no high frequency city bound service at any time.
- 8.4.7.4. Policy SMT26 Commuter, Shopping, Business and Leisure Parking seeks to discourage commuter parking and to ensure adequate but not excessive parking provision for short-term shopping, business and leisure uses. In the absence of a Mobility Management Plan/Travel Plan, I am not satisfied that the provision of zero parking to serve a proposed enlarged bar and restaurant area and a 22 bed hotel in

a non-central, suburban area, that is not serviced by high frequency public transport would be acceptable from a traffic safety and parking perspective.

- 8.4.7.5. I also note that Table 15-1 of the development plan requires the provision of an Operational Management Plan and Service Delivery and Access Strategy. No such information has been provided with the application.

## **8.5. Ecology**

- 8.5.1. The refusal reason states that an Ecological Assessment has not been submitted and that the development was not compliant with Policies GI14, GI15 and GI18, while the DoHLGH noted that the EclA addressing Non-Natura 2000 species had not been submitted.
- 8.5.2. It referenced possible impacts on Otter and Bats from light and noise. The DoHLGH recommendation was for further information regarding potential bat roosts, lighting design and planting along the riverbank, which is outside of the site boundary and therefore not within the ability of the applicant to address, other than by way of agreement with the landowner, who has not been identified by the applicant or the DoHLGH.
- 8.5.3. The applicant considers GI14 which requires an Ecological Impact Assessment and GI15 which require account to be taken of 'Planning for Watercourses in the Urban Environment' 2020' could be addressed by way of a condition. GI18 refer to then minimisation of light and noise impact, but no lighting design scheme has been prepared and no noise assessment was submitted either as part of the application or the appeal
- 8.5.4. In the absence of an assessment of non-Natura 2000 fauna, in terms of impacts from the development including first identifying the species that may be affected and secondly to assess possible impacts including noise and lighting, I do not concur with the applicant's consideration that the scheme would have a negligible impact on the Dodder river bank.

## **8.6. Conservation Area**

- 8.6.1. In redoing to the refusal references to impacts on the conservation area, the applicant stated that the conservation area refers to visual amenity and not ecology. I would concur.

8.6.2. Section 15.15.2.2 of the development plan states that all planning application for development in conservation areas shall 1) Respect the existing setting and character of the surrounding area; 2) Be cognisant and/ or complementary to the existing scale, building height and massing of the surrounding context; 3) Protect the amenities of the surrounding properties and spaces; and 4) Provide for an assessment of the visual impact of the development in the surrounding context.

8.6.3. I have already addressed points 2 and 3 above and concluded that the height is considered excessive and that the proposed development would not protect the amenities of the surrounding properties. The applicant has not provided a visual assessment. although with respect to character and setting, there is a mix of building types in the immediate area and I do not consider that the design or material finished to the building would negatively affect the character of the area.

## **8.7. Other matters**

### **8.7.1. Archaeology**

8.7.1.1. The archaeology section has recommended a detailed condition be imposed to address potential sub-surface archaeological material that may be affected by the construction of the lower ground floor level and combined sewer. I am satisfied that the attachment of an appropriate condition would be acceptable, should the board be minded to grant permission.

### **8.7.2. Combined Sewer**

8.7.2.1. The Engineering Service Report briefly refers to the proposal to divert the existing combined sewer and to construct a new combined sewer close to the sites southern boundary and the Millrace apartment development. Drawing C-1 shows the layout while C-4 is a cross-section of the proposed combined sewer. There is no cross-section of the existing culvert or how it and the proposed diverted see would interact.

8.7.2.2. No details have been provided of how it is proposed to clear the site and install the secant pile walls, all the while continuing to allow the existing sewer to operate, or how it is proposed to connect into the diverted sewer. This information should have been included and is reflected in the request for further information recommended by Uisce Eireann. The information described above is considered necessary as the site

is located immediately adjacent to the River Dodder, which could be directly affected by any pollution events that occur as a result of damage caused to the existing sewerage system. In the absence of adequate details, I am not satisfied that the proposed development would not be prejudicial to public health.

#### 8.7.3. Piles and Foundations

8.7.3.1. While drawing C-4 shows a cross-section of the proposed secant piles and new combined sewer, the drawing fails to show any details of the foundations or rising walls of the adjacent Millrace development, which could be affected by the installation of the proposed piles at a distance of 600mm from their external wall. In the absence of specific details of how the proposed piles would affect and interact with Millrace, I am not satisfied that the proposed development would not affect the structural integrity of Millrace. In this respect the applicant has not addressed potential changes in groundwater flow as the secant piles would be installed to a depth of 4.5m below the existing lower ground floor level which could create a permeable wall barrier along the side the Millrace. In the absence of specific details it is not possible to exclude such potential impacts.

#### 8.7.4. Climate Action and Energy Statement

8.7.4.1. Section 3.5.3 of the development plan requires new developments in excess of 1,000 sq. m. or more of commercial floor space, to include a Climate Action Energy Statement. The purpose of this statement is to demonstrate how low carbon energy and heating solutions have been considered as part of the overall design and planning of the proposed development

8.7.4.2. The proposed development proposes 1395sqm of new floor space. If the board is minded to grant permission I would recommend that a condition is attached requiring that a Climate Action Energy Statement be submitted.

#### 8.7.5. Precedents

8.7.5.1. While the applicant refers to two precedents understood to be hotels that they already operate, the two sites are zoned Z4 'Key Urban Villages/ Urban Villages' where 'Hotel' is a 'Permissible Use' whereas the current site has different and site

specific circumstances including that it is zoned Z1 where Hotel is 'Open for Consideration'.

- 8.7.5.2. The applicant refers the board to three projects that were permitted close to the Dodder being 1) Dodder Greenway downstream of Anglesey Bridge; 2) Flood Protection works at Beaver Row, and; 3) Office building at Eglinton Road/Annesley Bridge. However, they have not provided any evidence or information in respect of those three projects or set out why they consider that the permitted projects are relevant to the current proposal.

## 9.0 AA Screening

- 9.1. In accordance with Section 177U(3) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the application contains insufficient information to enable the board to undertake a fully informed assessment and to reach a definitive determination as to whether or not the proposed development is likely to have a significant effect on the Qualifying interests of European Site(s) located in Dublin Bay 'alone' or in combination with other projects in respect of effects associated with surface water and groundwater pollution.
- 9.2. If the board is minded to grant permission and does not agree with my recommendation to refuse permission for the proposed development, then it may consider it appropriate to seek further information for the applicant to address the absence of information on file regarding the impact of the proposed diverted combination sewer on European sites. If the board accepts the recommendation to refuse permission then it may be appropriate to advise the applicant of the deficiencies that have been identified in the application, to assist them should they decide to submit another application in the future.

## 10.0 Recommendation

- 10.1. I recommend a SPLIT DECISION as follows:

That permission is GRANTED for:

e) Alterations to the west (front) façade to provide two no. shopfronts with names over, and two storey extension (21sqm per total) to the rear, facing east;

f) New window to east elevation, lower ground floor;

That permission is REFUSED for:

a) The demolition of:

- (i) recent (unauthorised) west walls to the carpark;
- (ii) timber-framed, glazed, garden room at lower ground floor (220sqm), roof profile to be modified as required at b) below; and
- (iii) a previously existing roofed outdoor seating area at upper ground floor level (51sqm);

- b) The construction of a five-storey extension (1395sqm) to the south part of the existing two-storey building, containing public house/restaurant on lower and upper ground floors and boutique hotel bedrooms on first, second and third floors. Bedrooms to be provided with balconies/terraces facing east and west; public house/restaurant to have terraces facing east at both levels. Ancillary services to include waste storage at lower ground level with service lift to upper ground floor level (street level);

- c) Enclosed plant room to rear (east) on roof of existing public house (first floor level);

- d) Associated hard and soft landscaping, including drainage and works to public sewer and 8 No. of cycle parking spaces.

- g) (Retention of) steel pedestrian gate at north-east corner of site.

Subject to the reasons and consideration and conditions set out below.

## **11.0 Reasons and Considerations**

### **11.1. Schedule 1: Retention of:**

e) Alterations to the west (front) façade to provide two no. shopfronts with names over, and two storey extension (21sqm per total) to the rear, facing east;

f) New window to east elevation, lower ground floor;

#### 11.1.1. **Reasons and Considerations**

Having regard to the Z1 zoning objective of the area, the design and layout of the alterations to the existing premises and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual amenities of the area or the amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

#### 11.2. **Conditions**

- 1 The development shall be retained in accordance with the plans and particulars submitted with the planning application except as may be otherwise required by the following conditions.

**Reason:** To clarify the plans and particulars for which permission is granted.

- 2 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

#### 11.3. **Schedule 2 – Refusal for**



a) The demolition of:

- (i) recent (unauthorised) west walls to the carpark;
  - (ii) timber-framed, glazed, garden room at lower ground floor (220sqm), roof profile to be modified as required at b) below; and
  - (iii) a previously existing roofed outdoor seating area at upper ground floor level (51sqm);
- b) The construction of a five-storey extension (1395sqm) to the south part of the existing two-storey building, containing public house/restaurant on lower and upper ground floors and boutique hotel bedrooms on first, second and third floors. Bedrooms to be provided with balconies/terraces facing east and west; public house/restaurant to have terraces facing east at both levels. Ancillary services to include waste storage at lower ground level with service lift to upper ground floor level (street level);
- c) Enclosed plant room to rear (east) on roof of existing public house (first floor level);
- d) Associated hard and soft landscaping, including drainage and works to public sewer and 8 No. of cycle parking spaces.
- g) (Retention of) steel pedestrian gate at north-east corner of site.

#### 11.4. Reasons

- 1 The proposed development would significantly increase the footprint of and intensify the use of the existing public house and restaurant premises at lower ground and upper ground floor levels including an external terrace at the rear and would introduce a hotel at first, second and third floor levels with balconies, immediate abutting a private residential development to the south, and having regard to the layout, height and scale of the proposal relative to the existing residential development to the south, it is considered that in the absence of noise impact assessment, an operational management plan and proposal to mitigate direct overlooking of adjoining private open spaces, the board cannot be satisfied that the proposed development would not seriously injure the residential amenities and depreciate the value of adjoining properties by reason of visual

obtrusion, overbearance and noise interference. The proposed development would, therefore, be contrary to Policy CEE28 relating to 'visitor accommodation' that requires hotel developments to prevent unacceptable intensification of activity, particularly in predominantly residential areas, and would be contrary to Section 15.15.2.2 'Conservation Areas' where planning applications are required to protect the amenities of surrounding properties. Therefore, the proposed development would be contrary to the sites Z1 zoning objective, as it would not protect or improve residential amenity and would be contrary to the proper planning and sustainable development of the area.

- 2 The Applicants Appropriate Assessment Screening Report states that the River Dodder is home to Annex 1 (Habitats Directive) Otter and Kingfisher (Birds Directive), while the river is also known as a commuting route for bats. Policy GI10 seeks to adequately protect flora and fauna (under the EU Habitats and Birds Directives), the Wildlife Acts 1976 (as amended) wherever they occur within Dublin City, while Policy GI14 'Ecological / Wildlife Corridors', requires the submission of an Ecological Impact Assessment for any proposed development likely to have a significant impact on habitats and species of interest on or adjacent an ecological corridor and Policy GI18 seeks to minimise the environmental impact of external lighting and noise at sensitive locations for the protection of sensitive species such as bats. In the absence of a lighting plan and an ecological impact assessment, and detailed landscaping proposals for the site, the board is not satisfied that proposed development would not adequately protect protected flora and fauna and the proposed development would be contrary to Policies GI14 and GI18 of the Dublin City Development Plan 2022-2028.
- 3 Having regard to the suburban location of the site and the non-provision of car parking or a loading and set down area for the proposed 22 bedroom hotel and expanded bar and restaurant, and to the absence of 1) a Mobility Management Plan/Travel Plan; 2) a Service Delivery and Access Strategy and 3) an Operational Waste Management Plan, it is considered that the proposed development would be likely to give rise to unacceptable levels of overspill and haphazard parking on adjacent road network, would

seriously injure the amenities of the area and would endanger public safety by reason of traffic hazard and obstruction of pedestrians and other road users. It is also considered that the proposed development would be contrary to Policy SMT26, which requires, inter alia, adequate but not excessive parking provision is provided for leisure uses. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 4 On the basis of the information submitted with the application and appeal, with particular regard to a lack of detail provided regarding the type and depth of the foundations of the adjacent Millrace residential development to the south, adjacent to which it is proposed to install secant piles and construct an external wall immediately abutting Millrace, the Board cannot be satisfied that the proposed works would not affect the structural integrity of the Millrace and would not pose a risk to the health, safety and residential amenities of the occupants of the adjacent property to the south. In such circumstances, it is considered that it would be inappropriate for the board to consider a grant of permission for the proposed development.
- 5 The steel gate for which retention planning permission is sought as part of the development description and is shown on the site layout plans to be located at the north eastern corner of the site is not in situ at this location. In this regard it is considered inappropriate to grant permission in a circumstances where the statutory description of the development seeking retention is not consistent with the existing status of the subject site. The proposed development would, therefore, be contrary to proper planning and sustainable development.

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.

---

Joe Bonner

Senior Planning Inspector

20<sup>th</sup> March 2025

## Appendix 1 Form 1

### EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	ABP-319365-24		
<b>Proposed Development Summary</b>	Demolition of structures, construction of extension, retention of alterations with all associated site works		
<b>Development Address</b>	Ashton's Pub, 11 Vergemount, Clonskeagh Road, Dublin 6		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	✓
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>	✓	Class 10(b)(iv) of Part 2: Urban Development Class 14 of Part 2 (demolition)	Proceed to Q3.
<b>No</b>			
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			
<b>No</b>	✓	The proposed development is not a type of project for which EIA is mandatory, as per Part 2 of Schedule 5 to the Planning and Development Regulations 2001 (as amended).  The proposed development does not meet or exceed any relevant thresholds.	Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	✓	<p><u>Class 10(b)(iv) of Part 2:</u> The threshold for Urban development which would involve an area greater than ... 2 ha in the case of a business district or 10ha in other parts of a built-up area. The site area is 0.1008ha.</p> <p><u>Class 14 of Part 2 (demolition)</u> (No threshold). This element is described as 'Works of demolition' carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.</p> <p>It is proposed to demolish i) a wall ii) a timber-framed, glazed, garden room at lower ground floor (220sqm), and (iii) a roofed outdoor seating area at upper ground floor level (51sqm).</p> <p>The nature of the proposed works would not be likely to have significant effects on the environment.</p>	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	✓	Screening determination remains as above (Q1 to Q4)
Yes		

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-319365-24
<b>Proposed Development Summary</b>	Demolition of structures, construction of extension, retention of alterations with all associated site works
<b>Development Address</b>	Ashton's Pub, 11 Vergemount, Clonskeagh Road, Dublin 6
<p><b>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.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<p><b>Characteristics of proposed development</b></p> <p>(In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The proposed development will consist of the demolition of two of timber structures with a combined floor area of 271sqm, that are currently in use as part of pub and restaurant premises. The existing buildings to be retained have a floor area of 568sqm. The site is 0.1008ha (1008sqm).</p> <p>It is proposed to replace the existing timber structures with a 5 storey over lower ground floor level structure that would accommodate additional pub/restaurant floor space at lower ground and ground floor levels, with 22 bedrooms at first, second and third floors. The proposal would add 1,395sqm of floor space, increasing the floor space by 245%.</p> <p>The prevailing land use in the area is residential, in a mix of two and three storey buildings, while three storey apartment buildings are located either side of Ashtons, with one four storey building located c75m to the north. Permission has expired for four storey apartment buildings on the former Smurfit paper Mill site to the south, while 1 and 2 storey Clonskeagh hospital is located to the west, on elevated ground.</p> <p>The proposed development would generate waste as a result of demolition, construction and operation. Given the moderate size of the proposed buildings, I do not consider that the level of waste that would be</p>

	<p>generated would be significant in the local, regional or national context and would not require the use of substantial resources. No significant waste, emissions or pollutants would arise during the demolition, construction or operational phases.</p> <p>Due to the nature of the proposed use, I am satisfied that the development, does not pose a risk of major accident and/or disaster.</p> <p>The development includes a proposal to divert the existing combined sewer that runs beneath the site. The Engineering Service Report refers to the proposed diversion and to drawing C4 showing a longitudinal section and cross section of the proposed diverted pipe and secant piles running the entire length of the pipe to protect it, while Drawings C2 and C4 indicate that the southern boundary wall of the hotel would be built on top of a 1.5m wide pile cap along the boundary with the Millrace apartments. The secant piles are shown to run 4.5m, below the lower ground floor level. The Flood Risk Assessment has stated that the site lies in an area with extreme groundwater vulnerability and that the likelihood of groundwater rising through the ground and causing potential flooding on site during prolonged wet periods is high. The cross section in drawing C4 does not show the foundations or any details of the adjacent Millrace development, so it is not possible to determine whether or not the proposed development would have an impact on Millrace and no consideration has been given to the impact of the proposed secant piles on the foundations of the Millrace development based on potential changes in groundwater levels, or instability, as a result of the installation of the piled wall.</p> <p>Similarly, the proposed secant piles would be installed in close proximity to the Flood Relief wall that runs along the sites eastern boundary but no details have been provided of how the piles and wall would interact. I also note that the Drainage Division of DCC has questioned whether the raising of the ground levels, that has already happened, would impact the structural or functional integrity of the</p>
--	---

	<p>flood wall. It is also noted that the EHO has recommended that a condition be attached requiring a construction and demolition management plan to be submitted. No details have been provided of the levels of the existing culvert that is to be replaced, so it is not clear how it would be affected by the proposal to install piles through the culvert to install the new combined sewer pipe before the existing culvert is decommissioned or of the structural integrity of the existing culvert. I am not satisfied on the basis of the information provided with the application that the proposed development would not present a risk to human health.</p> <p>The development will implement SUDS measures to control surface water run-off including green/blue roofs and permeable paving, from which surface water would be released by hydrobrake into the stream. A 20% allowance has been factored in for climate change. I am satisfied that the site would not be at risk of pluvial flooding and while there is a risk of fluvial flooding in extreme weather events, I do not consider that it would present a risk to human health.</p>
<p><b>Location of development</b></p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The application site is currently occupied by a public house and restaurant over two floors. It is not located in or immediately adjacent to any European site but is located immediately adjacent to the River Dodder, which is designated as an ecological corridor in the Dublin City Development Plan. The closest Natura 2000 sites are those in the Dublin Bay area being South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) and South Dublin Bay SAC (Site Code:000210), c2.17km to the east in a direct line and c6.33km hydraulically via the River Dodder and River Liffey</p> <p>The immediate area consist of 2-4 storey residential buildings, while a hospital is located to the west.</p> <p>There are no protected landscapes, or sites of historic, cultural or archaeological significance in the vicinity of the site.</p> <p>The proposed development would connect to public water and wastewater services provided by Uisce</p>



	<p>Eireann, upon which its effects are undetermined, but could be significant as it is proposed to divert the existing combined sewer that runs through the site and Irish Water has sought further information regarding the need to build over, alter or divert it. The applicant has no provide any construction details of how the propose to carry out the pipe diversion works with the existing culvert in place, so there is potential for leakage of wastewater across thew site and into the River Dodder.</p> <p>There are no significant permitted or projects in the area, as a number of previously permitted development on the Smurfit Paper Mill site have expired so the proposed development would not have significant cumulative effects on the environment.</p>
<p><b>Types and characteristics of potential impacts</b></p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Having regard to:</p> <ol style="list-style-type: none"> <li>1) The absence of detail regarding how it is proposed to install the new combined sewer beneath the existing brick culvert combined sewer, while at the same time keeping the existing culvert in operation;</li> <li>2) To the absence of an agreement with Uisce Éireann to build, over, alter or divert the existing culvert, and;</li> <li>3) The proposal to install secant piles along the southern site boundary, immediately adjacent to the Millrace apartment development and along the eastern site boundary in close proximity to the Dodder Flood Relief wall and to the absence of any information on the file regarding the nature and/or extent of the foundation depths or foundation type for the Millrace and flood relief wall, and to the absence of any assessment of the impact of the proposed development on the structural integrity of both structures or to the absence of any assessment of potential changes in local groundwater flows and impacts on the Millrace and the flood relief wall, as a result of the installation of the secant piles;</li> </ol> <p>I am not satisfied that there is no potential for significant effects on the environmental factors set out in Section 171A of the Planning and Development Act 2000 (as amended) (human health) having regard to the criteria set out in</p>

	Schedule 7 to the Planning and Development Regulations 2001 (as amended).	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	No
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	Yes
There is a real likelihood of significant effects on the environment.	EIAR required.	No

**Inspector:**

**Date:**

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)

## Appendix 2 – Appropriate Assessment Screening Determination

### Screening for Appropriate Assessment

#### Stage 1 - Screening Determination

##### Step 1: Description of the project

I have considered the proposed extension that would increase the size of the existing pub/restaurant and create a new 22 bed hotel, in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

There are no European sites (Natura 2000) in the immediate vicinity of the proposed development site. The closest European sites are those in the Dublin Bay area being South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) and South Dublin Bay SAC (Site Code:000210), c2.17km to the east in a direct line and c6.33km hydraulically via the River Dodder and River Liffey..

The proposed development will consist of the demolition of a number of structures that are currently in use as part of the Ashtons pub and restaurant premises. The existing buildings to be demolished have a floor area of 271sqm. The site is 0.1008ha (1008sqm).

It is proposed to replace the two existing timber structures with a 5 storey over lower ground floor level structure that would accommodate additional pub/restaurant floor space at lower ground and ground floor levels, with 22 bedrooms at first, second and third floors. The proposal would add 1,395sqm of floor space, an increase of 245% from the 568sqm that is to be retained, giving a total floor area of 1,963sqm.

I have provided a detailed description of the site location and its surrounding context in Section 1 of my report, while the development is described in detail in Section 2. Detailed specifications for the proposed development are provided in the planning documents provided by the applicant, which are listed in section 2.4 of my report.

There are no water bodies within the site but the site is located immediate adjacent to the River Dodder that flows into the tidal River Liffey 3.65km to the north, adjacent to Grand Canal Dock. The Liffey in turn connects hydrologically with the with the South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) a further 2.7km downstream from where the Rivers Dodder and Liffey meet.

The application was accompanied by an AA Report that was prepare by Openfield Ecological Services and also includes an Engineering Service Report that addressed surface water and sewage disposal, as well as a Flood Impact Assessment and Surface Water Management Plan.

### Applicant's Stage 1 Screening Report

The applicant submitted a Stage 1 AA Screening Report. It identified 5 European sites that had direct hydrological connectivity to the site via the River Dodder, while there is an indirect pathway to Dublin Bay via the combined foul sewer and the Ringsend Wastewater Treatment Plant (WwTP). It states that the direct pathway to European site is c7km via the freshwater Dodder and tidal River Liffey so the dilution effect for any potential pollutants is enormous and this pathway is weak. The water sampling from the WwTP has an observable effect in inner Liffey Estuary and Tolka Estuary but does not extend to coastal waters or the Irish Sea. The Poulaphouca Reservoir SPA (c23km southwest of the site) is also considered to be within the zone of influence of the site as the drinking water supply to the site is from the reservoir. Data sources included the Water Framework Directive states that all water bodies must attain 'Good ecological status' by 2015 or with some exceptions by 2027. The River Dodder was assessed as moderate', while permission has been granted for the upgrade of the Ringsend WwTP, which found that periodic nutrient overloading from the plant into Dublin bay, could have a localised declines in and pose a threat to some shellfish, fish, birds and marine mammals, but the environment will remain largely unchanged and bird populations will be unaffected. The zone of influence of the existing WwTP is to the north side of Dublin Bay and no significant effects are likely to arise from wastewater. There would be no loss of or disturbance of habitats or other semi-natural habitats that may act as ecological corridors for important species associated with the qualifying interests (QI's) of European sites. No effects can occur on Otter or Kingfisher as these species are not qualifying interests of European sites within the zone of influence. The site does not provide suitable habitats for qualifying bird interests of coastal SPA's and no ex-situ impacts can arise. The SUDS proposals, which are not mitigation, will result in positive changes to the quantity and quality of run-off and no significant effect are likely to arise as a result from surface water. There is no movement of earth/soil that might enter the Dodder as sediment. Even if it did enter the river, sediment is not a pollutant and is required for the functioning of the mudflat habitats in the European Sites. While invasive species are located in the riparian zone, this is outside of the site area and no significant effects are likely. No effects are likely to arise to the Poulaphouca reservoir from water abstraction. There are no plans or projects which can act in combination with the development to give rise to significant effects on any European sites.

It concluded that no significant effects are likely to arise from the project on any Natura 2000 site with alone or in combination with other plans or projects . No mitigation measures were taken into account.

Reference to retention elements of the development and South Dublin County Council are clear errors in the report, as is the statement that there is no movement of earth/soil from the site.

## Planning Officer's Report

The planning officer's report stated that the planning authority, as the competent authority, has undertaken the Appropriate Assessment screening of the development and has determined that progression to Stage 2 of the Appropriate Assessment process (i.e. the preparation of a Natura Impact Statement) is not considered necessary. They also stated that it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

### **Step 2: Potential impact mechanisms from the project**

#### Potential for Direct Impacts on European Sites

The site is not located within or adjoining any European Sites, but there is a direct pathway between the site and the European sites in Dublin Bay, via the River Dodder that runs along the eastern site boundary, into which surface water from the site will be discharged. As an entirely built upon brownfield site, it is entirely composed of buildings and artificial surfaces 'BL3' and there are no Annex I habitats onsite, while the site does not contain suitable supporting habitat for Annex II species or SCI bird species of South Dublin Bay and River Tolka Estuary SPA [Site Code: 004024], North Bull Island SPA [Site Code: 004006] or the North West Irish Sea SPA [Site Code: 004063].

The applicant has provided an Engineering Service Report that demonstrates that proposed SuDS measures, including rooftop blue/green roofs and permeable paving, which are not deemed to be mitigation measures, would limit the surface water discharge from the site from 7.5l/s at present to 2l/s.

I note that the drainage division recommended further information seeking clarity on the proposed flood mitigation measures and to demonstrate that the raising of ground at the rear of the site has no adverse impact on the structural or functional integrity of the flood wall that runs along the sites eastern boundary and to confirm that an appropriate Health and Safety risk assessment has been carried out, while Uisce Éireann required consultation about the plans to build over, alter or divert the combined sewer that runs through the site.

#### Potential for Indirect Impacts on European Sites

Even though the applicant's drawings indicates that sewage would be sent to the public combined sewer, and they have supported this in the Engineering Service Report with calculations of the loadings that would be produced by the overall extended development, the Screening Report notes that wastewater will be sent to the Ringsend Wastewater Treatment Plant that is currently not in compliance with the Urban Wastewater directive, but is managed under an EPA Licence.

As a result, and applying the source-pathway-receptor model in determining possible indirect impacts and effects of the proposed development, sources of potential impact are considered to include:

- Direct runoff of surface water from the site to the River Dodder.

- Release of hydrocarbons, solvents, cementitious materials during demolition and construction to surface water and groundwater.
- Overloading of the public surface water system.
- Elevated noise and dust levels during demolition and construction.

### Step 3: European Sites at risk

#### European Sites within the Potential Zone of Impact

Only those sites which have a possible ecological connection, or impact pathway, have been included. They are listed in the table below:

European Site	Qualifying Interests	Distance	Connections
<b>South Dublin Bay and River Tolka Estuary SPA</b> [site code 004024]	<ul style="list-style-type: none"> <li>• Light-bellied Brent goose <i>Branta bernicla hrota</i> [A046]</li> <li>• Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</li> <li>• Ringed plover (<i>Charadrius hiaticula</i>) [A137]</li> <li>• Grey plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Knot (<i>Calidris canutus</i>) [A143]</li> <li>• Sanderling (<i>Calidris alba</i>) [A149]</li> <li>• Dunlin (<i>Calidris alpina</i>) [A149]</li> <li>• Bar-tailed godwit (<i>Limosa lapponica</i>) [A157]</li> <li>• Redshank (<i>Tringa tetanus</i>) [A162]</li> <li>• Black-headed gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>• Roseate tern (<i>Sterna dougallii</i>) [A192]</li> <li>• Common Tern (<i>Sterna hirundo</i>) [A193]</li> <li>• Arctic tern (<i>Sterna paradisaea</i>) [A194]</li> <li>• Wetland and waterbirds [A999]</li> </ul> <a href="https://www.npws.ie/protected-sites/search/by-code?code=004024">https://www.npws.ie/protected-sites/search/by-code?code=004024</a>	2.17km to the east	<p>Indirect surface water via river Dodder to European Sites in Dublin Bay.</p> <p>Indirect - foul sewage via public sewer discharging to Ringsend WWTP, with potential overflow into Dublin Bay.</p>
<b>South Dublin Bay SAC</b> [Site Code: 000210]	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Embryonic shifting dunes [2110]</p> <a href="https://www.npws.ie/protected-sites/sac/000210">https://www.npws.ie/protected-sites/sac/000210</a>	2.17km to the east	As above
<b>North Bull Island SPA</b> [site code 004006]	<ul style="list-style-type: none"> <li>• Light-bellied brent goose (<i>Branta bernicla hrota</i>) [A046]</li> <li>• Shelduck (<i>Tadorna tadorna</i>) [A048]</li> <li>• Teal (<i>Anas crecca</i>) [A054]</li> <li>• Pintail (<i>Anas acuta</i>) [A054]</li> <li>• Shoveler (<i>Anas clypeata</i>) [A056]</li> <li>• Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</li> <li>• Golden plover (<i>Pluvialis apricaria</i>) [A140]</li> </ul>	6.6km to the north east	As above

	<ul style="list-style-type: none"> <li>• Grey plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Knot (<i>Calidris canutus</i>) [A143]</li> <li>• Sanderling (<i>Calidris alba</i>) [A144]</li> <li>• Dunlin (<i>Calidris alpina</i>) [A149]</li> <li>• Black-tailed godwit (<i>Limosa limosa</i>) [A156]</li> <li>• Bar-tailed godwit (<i>Limosa lapponica</i>) [A157]</li> <li>• Curlew (<i>Numenius Arquata</i>) [A160]</li> <li>• Redshank (<i>Tringa totanus</i>) [A162]</li> <li>• Turnstone (<i>Arenaria tetanus</i>) [A169]</li> <li>• Black-headed gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>• Wetland and waterbirds [A999]</li> </ul> <a href="https://www.npws.ie/protected-sites/spa/004006">https://www.npws.ie/protected-sites/spa/004006</a>		
<b>North Dublin Bay SAC [site code 000206]</b>	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Annual vegetation of drift lines [1210]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) [1330]</li> <li>• Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> <li>• Embryonic shifting dunes [2110]</li> <li>• Shifting dunes along the shoreline with marram grass <i>Ammophila arenaria</i> (white dunes) [2120]</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</li> <li>• Humid dune slacks [2190]</li> <li>• Petalwort (<i>Petalophyllum ralfsii</i>) [1395]</li> </ul> <a href="https://www.npws.ie/protected-sites/sac/000206">https://www.npws.ie/protected-sites/sac/000206</a>	6.6km to the north east	As above
<b>North West Irish Sea SPA [Site Code: 004236]</b>	<ul style="list-style-type: none"> <li>Red-throated Diver (<i>Gavia stellata</i>) [A001]</li> <li>Great Northern Diver (<i>Gavia immer</i>) [A003]</li> <li>Fulmar (<i>Fulmarus glacialis</i>) [A009]</li> <li>Manx Shearwater (<i>Puffinus puffinus</i>) [A013]</li> <li>Cormorant (<i>Phalacrocorax carbo</i>) [A017]</li> <li>Shag (<i>Phalacrocorax aristotelis</i>) [A018]</li> <li>Common Scoter (<i>Melanitta nigra</i>) [A065]</li> <li>Little Gull (<i>Larus minutus</i>) [A177]</li> <li>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>Common Gull (<i>Larus canus</i>) [A182]</li> <li>Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]</li> <li>Herring Gull (<i>Larus argentatus</i>) [A184]</li> </ul>	6.6km to the north east	As above

	Great Black-backed Gull ( <i>Larus marinus</i> ) [A187] Kittiwake ( <i>Rissa tridactyla</i> ) [A188] Roseate Tern ( <i>Sterna dougallii</i> ) [A192] Common Tern ( <i>Sterna hirundo</i> ) [A193] Arctic Tern ( <i>Sterna paradisaea</i> ) [A194] Little Tern ( <i>Sterna albifrons</i> ) [A195] Guillemot ( <i>Uria aalge</i> ) [A199] Razorbill ( <i>Alca torda</i> ) [A200] Puffin ( <i>Fratercula arctica</i> ) [A204] <a href="https://www.npws.ie/protected-sites/spa/004236">https://www.npws.ie/protected-sites/spa/004236</a>		
<b>Poulaphouca Reservoir</b> <b>[Site Code: 004063]</b>	Greylag Goose ( <i>Anser anser</i> ) [A043] Lesser Black-backed Gull ( <i>Larus fuscus</i> ) [A183] <a href="https://www.npws.ie/protected-sites/spa/004063">https://www.npws.ie/protected-sites/spa/004063</a>		

### Surface Water

The site is entirely covered with hard surfaces at present and all surface water runs attenuated into the combined sewer that flows across the site. The applicant has calculated that current unattenuated flow from the site is 7.5l/s.

The applicant's Engineering Service Report and drawings indicate that the surface water network will incorporate appropriate management measures to regulate discharge flows in terms of quantity and quality, including attenuation in blue green/roofs and permeable paving, while it is projected that there will be decreased in surface water leaving the site from 7.5l/s to 2l/s and that it would flow into the surface water pipe that runs to the north of the site and discharges into the River Dodder rather than to the combined sewer. The attenuation proposals do not reference proposal for any petrol interceptors, which would be a standard feature of drainage systems, while the levels of the existing pipe have not been provided.

The applicant has not submitted either a Construction Management Plan or a Construction Demolition Management Plan as is required by Table 15-1 of the development plan for commercial developments of more than 1,000sqm. In the absence of details of how it is proposed to install the proposed new combined sewer at the same time as keeping the existing culvert operating, there is potential for surface water contamination during construction works and I am not satisfied that the applicant has addressed this matter in the application, taking into account the proximity of the proposed works to the flood relief wall and to the River Dodder which is as direct hydraulic link to European sites in Dublin Bay. Notwithstanding the separation distance that exists between the site and the European site and the dilution effects and the extent of intervening urban environment, together with the conservation objectives of the designated sites in Dublin Bay, I am not satisfied that there is no possibility of significant impacts on any European site from surface water generated by the development.



Release of hydrocarbons, solvents, cementitious materials during demolition and construction to surface water and groundwater.

While the application includes drawings showing the routes of the existing combined sewer and the proposed diverted sewer, it does not provide levels for or specifications of the existing combined sewer culvert running across the site, so the AA screening conclusions did not have the benefit of assessing how it is proposed to construct the new diverted combined sewer beneath or at the same level as the existing sewer, while at the same time keeping the existing culvert in service, while no agreement has been reached with Uisce Éireann.

There is a direct hydrological link between the development site and the European sites in Dublin bay, so in the absence of specific details of how the works would be carried out I am not satisfied that the potential for significant effects from the proposed development on European sites by reason of contamination of surface water and groundwater, during the demolition and construction phases of the development, that would undermine the conservation objectives of the European Site/s by reason of the project alone, can be excluded.

At the operational phase, surface water drainage proposal including SuDS measures and standard surface drainage measures associated with the development are sufficient to prevent contamination of surface water or ground water.

Water Quality

The proposed development would place an additional demand over the existing situation on the public foul drainage as well as water supply. While there is capacity in the existing potable water supply to cater for the demands generated by the proposed development, the Ringsend Wastewater Treatment Plant is not currently compliant with its emission limit standards. Notwithstanding this fact, there are major upgrade works currently underway which will enable it to treat the increasing volumes of wastewater arriving at it to the required standard, thus enabling future commercial development like that proposed under this application, within Dublin city to be serviced by the upgraded waste water public infrastructure. These works are projected to be completed in 2025, so would be operational by the time the proposed development, if permitted, and if implemented, would become operational.

I conclude that the proposed development would have no likely significant effect 'alone' on any qualifying feature(s) of the nearest potentially hydrologically connected European sites being South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and South Dublin Bay SAC (Site Code 000210) I further concluded that the proposed development would have no likely significant effect 'alone' on any qualifying feature(s) of any other European sites, such that it would undermine the conservation objectives of that qualifying interest.

Noise and Dust

Any potential impacts from noise and dust would be local in extent and the development site does not contain any habitats that would be visited by qualifying

bird interests for European sites in the area that are listed in the NPWS website [www.npws.ie](http://www.npws.ie) and the development site is at sufficient remove from SPA sites to avoid significant impacts from dust and noise impacting on the qualifying interests, consisting of birds and wetland habitat, such that the project alone would not undermine the conservation objectives of the European Site, by reason of the project alone. This would also apply to dust entering the river Dodder with the nearest hydrologically linked site being 6.33km downstream.

#### **Step 4: Likely significant effects on the European site(s) 'alone'**

The applicant has proposed that both surface water and foul water would discharge to the combined sewer which would in turn be treated at the Ringsend WWTP. I do not consider that the wastewater loading that would be generated by the proposed development would generate any significant additional demands on the existing public sewer network or on the Ringsend wastewater treatment plant (WWTP). Whilst there would be a marginal increase in loadings to the sewer network and the WWTP, upgrade works to the Ringsend WWTP extension have commenced and the facility is currently operating under an EPA licencing regime that is subject to separate AA Screening. I also note that no negative effects to European sites have been identified from the existing Ringsend WWTP.

Due to the scale of the project, it is unlikely that the project alone would undermine the conservation objectives of European sites, but this cannot be ruled out in the absence of details on the application regarding the proposed works to be carried out to divert the existing combined sewer, that proposed to install a new pipe at or below the level of the existing culvert, while I note the lack of agreement for the works with Uisce Éireann and also note that the applicant did not address these matters in the grounds of the appeal.

Therefore, until demonstrated otherwise by the applicant, potential significant impacts could arise from 1) surface water runoff as a result of a breach in the public sewerage culvert resulting in leakage of contaminated sewage from the site into the River Dodder and 2) Hydrocarbons, solvents, cementitious materials to surface water and groundwater due to a lack of detail provided regarding construction works at and near the River Dodder.

I conclude that in the absence of adequate construction drawings and information regarding the means of constructing the new diverted combined sewer and how it would interact with the existing culvert, which would remain operational. And the potential for breaches in the culvert as a result of the unspecified works, and the proximity of the site to the River Dodder that is directly connected to a number of European sites, that it cannot be determined whether or not the proposed development would have a likely significant effect 'alone' on the conservation objectives of European sites.

In light of the above conclusion, I consider that further assessment in-combination with other plans and projects is not required at this time.

### **Overall Conclusion- Screening Determination**

In accordance with Section 177U(3) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the application contains insufficient information to enable the board to undertake a fully informed assessment and to reach a definitive determination as to whether or not the proposed development is likely to have a significant effect on the Qualifying interests of European Site(s) located in Dublin Bay 'alone' or in combination with other projects in respect of effects associated with surface water and groundwater pollution.

If the board is minded to grant permission and does not agree with my recommendation to refuse permission for the proposed development, then it may consider it appropriate to seek further information for the applicant to address the absence of information on file regarding the impact of the proposed diverted combination sewer on European sites. If the board accepts the recommendation to refuse permission then it may be appropriate to advise the applicant of the deficiencies that have been identified in the application, to assist them should they decide to submit another application in the future.