



An
Coimisiún
Pleanála

Inspector's Report

ABP-320792-24

Development

Demolition of existing three storey commercial building and construction of a mixed-use development comprising 25 residential units and a commercial unit and all ancillary works.

Location

45-47 Fairview Avenue Lower,
Fairview, Dublin 3

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3902/24

Applicant

Newcourt Retirement Fund Managers Limited

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant

Newcourt Retirement Fund Managers Limited

Observers

Lorna Kane, Gavan Horan and Family
Colum O'Keeffe and Claire O'Leary
Jennifer Billings

Date of Site Inspection

27th November 2025

Inspector

John Duffy

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Appendix 1 – Form 1: EIA Pre-Screening
Form 2: Preliminary Examination

1.0 Site Location and Description

- 1.1. The appeal site, which measures 906 sqm (0.0906 ha) is located on the eastern side of Fairview Avenue Lower, a one-way street with on-street parking provision on its western side and limited loading bays on its eastern side, proximate to the subject site. The site, situated within 3km of O'Connell Street is proximate to high frequency transport services, within 1 km of Clontarf Road railway station and within 100m of the recently opened Clontarf to City Centre Active Travel Scheme (C2CC) comprising improved pedestrian facilities, segregated cycling facilities and bus priority infrastructure extending from the junction of Clontarf Road with Alfie Byrne Road, to Amiens Street at the junction with Talbot Street.
- 1.2. The subject site, bounded to the front and sides by paladin type mesh fencing is broadly rectangular in configuration. In the past, the site accommodated a cinema which has since been demolished. The rear of the development site as denoted by the red line boundary accommodates part of a large three storey disused commercial structure. Adjoining this structure to the front and within the red line boundary is a relatively large area of hardstanding presently used for the storage of cars. The site plan provided with the application indicates two rights of way, one adjoining to the north and one to the south, with both being outside the development site. Lands adjoining the appeal site to the north, with gated vehicular access from the public road, are presently used for car-parking purposes.
- 1.3. The site is bound by commercial properties to the south and east, while existing two and three storey residential dwellings bound the site to the north at Merville Avenue and Marino Court, respectively. To the west, opposite the subject site there are a number of three-storey houses above basement level, some of which are of Georgian character.

2.0 Proposed Development

- 2.1. Planning permission is sought as follows:
 - Demolition of existing three storey commercial building (area of building not indicated on Application Form).

- Construction of a mixed-use development comprising two blocks (Block A and Block B) with linked basements.
- **Block A**, to the front of the site, addresses Fairview Avenue Lower. It is a part three and four storey over basement mixed-use building, containing a total of 9 apartments comprising:
 - 2 no. studio apartments
 - 4 no. 1 bed apartments (including 1 no. penthouse apartment)
 - 3 no. 2 bed apartments.
- One commercial unit (72 sqm) is proposed in Block A at Level 0 / Basement level. Proposed storage lockers (nine in total) for Block A units, and a proposed bicycle servicing zone are also located at this level.
- The ground floor (denoted as Level 1) will comprise two apartments (1 no. 1 bed unit and 1 no. 2 bed unit).
- The first (Level 2) and second (Level 3) floors each provide three apartments (a studio unit, a 1 bed unit and a two bed unit).
- The top floor (Level 4) provides a penthouse unit (1 bedroom).

- 2.2. Block A has a maximum flat roof level of 13.8m which reduces to 10.8m at third floor, with the penthouse unit set back c 9.2m from the front elevation.
- 2.3. Material finishes comprise brick plinth and vertical brick – prefabricated panels on all elevations. Other finishes include pressed metal on extruded balcony frame, tinted glazing and faux glazing panels and perforated metal sliding panels.
- 2.4. **Block B**, located behind (east of) Block A and to the rear of the site, is a part five and six storey over basement residential building containing a total of 16 apartments comprising:
 - 5 no. studio apartments
 - 6 no. 1 bed apartments (including 1 no. penthouse apartment)
 - 5 no. 2 bed apartments

- At Level 0 / Basement level a loading bay, refuse facilities, storage lockers (16 in total), 45 no. bicycle spaces (with provision for electric bicycle charging) and two rental car parking spaces are proposed.
- The ground floor up to and including the 4th floor (5th storey) each contains a 1 bed unit, a two bed unit and a studio unit. The sixth storey provides a 1 bedroom penthouse.

2.5. Block B has a maximum flat roof level of 19.8m which reduces to 16.8m at fifth floor level. Material finishes are the same as Block A (see section 2.3 above)

2.6. The public notices include the following elements:

- Provision of communal amenity space (219 sqm) and general planting at ground floor level.
- All ancillary works inclusive of boundary treatments, visitor bicycle parking spaces (8), planting and SuDS necessary to facilitate the development.

2.7. Along with standard drawings and plans the following documentation was received with the planning application:

- Planning Report
- Unit Calculations
- Photomontage views
- Engineering Services Design Report
- Daylight Analysis and Overshadowing Study
- Mobility Management Plan Framework
- A letter (dated 8th May 2024) from parties stated to be the partial owners of the site consenting to the lodgement of the planning application.

While reference is made in the application documents to an Architectural Design Statement (ADS), there is a letter from the planning authority on file dated 15th October 2024 to An Bord Pleanála confirming that no such document was received with the planning application.

2.8. The first party appeal lodged in respect of Dublin City's Council decision to refuse permission includes revised plans and drawings for an amended design option which alters the proposed scheme as follows

- Block B is reduced from 6 storeys over basement level to 4 storeys over basement level.
- Roof terraces provided atop both Block A and Block B, cumulatively amounting to 117 sqm.

This revised proposal results in a reduction of four apartments in Block B, with the proposed mix in that block set out as follows:

- 4 no. studio apartments
- 4 no. 1 bed apartments
- 4 no. 2 bed apartments
- Each floor above basement level accommodates a studio unit, a 1 bed unit and a 2 bed unit.
- Block B, comprising a four storey above basement building as per revised plans, is c 13.8m in height. The structure at roof level which facilitates access to the roof terrace increases the overall height of Block B from ground level to c 15.9m.
- A revised Unit Calculation sheet and updated Photomontage Views are included with the appeal.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission on the 15th August 2024 for the following 5 no. reasons:

1. The proposed development is located within Zone Z4 lands in the Urban Village of Fairview and provides for 25 apartments on a site area of 0.0906ha which results in a gross density of 275.93 units per hectare (net density 299.76 units/ha). This is contrary to the density range requirements of Section 3.2 Density in Appendix 3 Achieving Sustainable Compact Growth Policy for Density and Building Height in the City within

the Dublin City Development Plan 2022-2028, which is between 60-150 units per hectare in Key Urban Villages, and is contrary to Policy and Objective 3.1 of the Sustainable and Compact Settlement Guidelines (2024). The proposed development would, therefore, provide for an excessive density contrary to National and Local Policy Objectives and prove contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development, by reason of excessive height, scale, massing and density would seriously injure the amenities existing properties in the vicinity by way of overbearance and undue overlooking, particularly nos. 36 Merville Avenue and 37 Merville Avenue and nos. 5, 6, 7 and 8 Fairview Avenue Lower. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The proposed development, by reason of its overall scale, height, bulk and massing would prove to be visually intrusive and overbearing when viewed on approach from the west from Fairview and from the south along Fairview Avenue Lower. The excessive height and architectural quality including the material selection, unrelieved balconies and fenestration pattern of the proposed development would impact adversely on the character of the surrounding area and fails to promote development with an appropriate sense of place and character and fails to demonstrate satisfactory compliance with the criteria set out in Section Table 3 of Section 4.0 of Appendix 3 to justify the proposed height of the development. The proposed development is therefore contrary to Policy SC17 and Section 4.0 (Table 3) of Appendix 3 of the Dublin City Development Plan 2022 - 2028 and the proper planning and sustainable development of the area.

4. The proposed commercial unit is set below street level and requires a wheel chair lift for accessible access. Additionally, the proposed development has provided limited street and public realm enhancement along Fairview Avenue Lower. The design would be detrimental to the character and animation of the streetscape and would not be in keeping with the Key Urban Villages/Urban Villages – Zone Z4 zoning pertaining to the site and contrary to Policy CCUV23 Active Uses which aims to promote active uses at street level in Key Urban Villages and urban villages and neighbourhood centres of the Dublin City Development Plan 2022 – 2028 and therefore prove contrary to the proper planning and sustainable development of the area.

5. The proposed development, by reason of inadequate separation distances achieved between windows of habitable rooms of Block A and Block B, and very poor quality of communal amenity space, would give rise to substandard levels of residential amenity for future occupants of the scheme and would prove contrary to SPPR 1 – (Separation Distances) of Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (2024) and Section 15.9.8 (Communal Amenity Space) of the Dublin City Development Plan 2022 - 2028 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer's report reflects the planning authority's decision to refuse permission for the five reasons, as detailed in section 3.1 above.

3.2.2. Other Technical Reports

Drainage Division: Further Information (FI) recommended due to lack of adequate information submitted.

Environmental Health: Conditions provided if permission granted.

Transportation Planning Division (TPD): FI recommended in relation to several items is summarised as follows:

- Provide updated drawings to clarify site's internal permeability design including issues regarding substandard pathway width and shared right of way access southwards. Pedestrian permeability concerns are noted along the existing public footpath at Fairview Avenue Lower.
- Concerns raised regarding the site's vehicular access from third party lands, including a right of way where informal car parking exists. Potential impact of existing informal parking area on the site's vehicular access.
- The street level (0) drawing indicates a break in the boundary wall in line with the right of way. The purpose of this access is questioned and whether it is separate to the existing entrance for vehicular access. Concern is raised that the right of

way becomes the only means of vehicular access to the site; on this basis turning movements to access car spaces and loading area are impossible.

- Loading bay for servicing is substandard in size and no supporting swept path analysis demonstrating the manoeuvrability of same is provided. No servicing strategy has been prepared. A swept path analysis for a refuse truck and delivery van should be provided, along with the location and design of the proposed waste storage area and a detailed Service Strategy Plan for the entire development.
- Provide information including a letter of intent from a car share provider for the two spaces proposed, a revised Mobility Management Plan to include, *inter alia*, details of car ownership data and travel patterns, provision of at least one accessible car space and motorcycle spaces, as per the City Development Plan.
- In order to consider a reduction in the provision of car parking spaces, high quality bicycle parking facilities should be provided including provision for cargo bikes, e-bikes and adapted bikes. The provision of a shared bicycle parking storage for residents and visitors is not supported.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Several third party observations were received by the planning authority from property owners / residents in the area. These are summarised in the Planning Officer's report as follows:

- The height is excessive and out of keeping with the local scale of surrounding buildings and homes.
- Concerns raised within level of proposed parking, 2 no. spaces. Parking is a serious issue around Fairview.
- Not enough communal green space and landscaping proposed for biodiversity.
- The design should maintain relationship with the community and existing dwellings.

- Misleading development description - Block B is described as three storey over basement level with set-back fourth/fifth floor levels.
- The minimal amount of basement level / on-site parking will ultimately result in more cars trying to park on-street in the surrounding residential area.
- Design out of character with the existing Lower Fairview homes – red brick Georgian houses.
- Building line should meet the dwellings/properties to the north.
- Concerns in relation to overshadowing and overlooking onto Merville Avenue, Marino Court.
- Concerns raised in relation to the alleyway entrance to the apartments.
- Disappointing public realm along Fairview Avenue – tight for pedestrians.
- Concerns in relation to the overall height and density.

4.0 Planning History

No recent, relevant planning history on the site.

5.0 Policy Context

5.1. National Guidance

5.1.1. Revised National Planning Framework (NPF)

The First Revision of the NPF was approved by the Houses of the Oireachtas following the decision of Government on 8th April 2025 to approve the Final Revised NPF.

Chapter 2 of the First Revision of the NPF is entitled ‘A New Way Forward.’ Relevant National Policy Objectives (NPOs) include:

NPO 3: Eastern and Midland Region: approximately 470,000 additional people between 2022 and 2040 (c. 690,000 additional people over 2016- 2040) i.e. a population of almost 3 million Northern and Western Region: approximately 150,000 additional people between 2022 and 2040 (c. 210,000 additional people over 2016- 2040) i.e. a population of just over 1 million; Southern Region: approximately 330,000

additional people over 2022 levels (c. 450,000 additional people over 2016-2040) i.e. a population of just over 2 million.

NPO 4: A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs.

NPO 7: Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements and ensure compact and sequential patterns of growth.

NPO 8: Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints and ensure compact and sequential patterns of growth.

NPO 11: Planned growth at a settlement level shall be determined at development plan-making stage and addressed within the objectives of the plan. The consideration of individual development proposals on zoned and serviced development land subject of consenting processes under the Planning and Development Act shall have regard to a broader set of considerations beyond the targets including, in particular, the receiving capacity of the environment.

NPO 12: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

NPO 22: In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth.

NPO 43: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

NPO 45: Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration, increased building height and more compact forms of development.

5.1.2. Delivering Homes, Building Communities 2025-2030: An Action Plan on Housing Supply and Targeting Homelessness This Action

Plan aims to build on this recent progress to further accelerate the delivery of new homes, to deliver 300,000 by the end of 2030. To build the number of homes needed in this timeframe, an estimated €20 billion in development finance will be required each year. To reach this level of delivery, the State will continue to commit significant funds towards the provision of social and affordable homes. Government has committed in excess of €9 billion in funding for housing through the Exchequer, the Land Development Agency (LDA) and the Housing Finance Agency in 2026. The remaining required funding will need to come from investment by the private sector to support homeownership and a well-functioning private rental market.

Reaching the housing 300,000 target will only be achieved through the individual and collective effort of the key delivery partners. Local authorities, together with Approved Housing Bodies (AHBs), the Land Development Agency (LDA) and the construction sector, will be critical to delivering and enabling the delivery of the quantum of homes needed over the lifetime of the plan. Central government will provide the policy, regulatory and funding frameworks to support housing delivery.

The Plan is built around two pillars Activating Supply and Supporting People, with four key priorities under each pillar.

Pillar 1 - Activating Supply focuses on activating the supply of 300,000 homes. This will be achieved through activating more land, providing more housing-related infrastructure, securing more development finance for home building, addressing viability challenges particularly those seen in apartment delivery, increasing the adoption of Modern Methods of Construction, increasing the skills in the residential construction sector and working toward ending dereliction and vacancy.

Key Priorities

1. Ensure a strong pipeline of zoned and serviced land is available.

Government will take action across a range of areas to ensure suitable zoned land is available for housing development, and to provide a greater level of certainty in relation to the planning process and timelines. Key actions include zoning more land to support

the delivery of 300,000 homes right across the country; fully implementing the Planning and Development Act 2024 to simplify and speed up the planning process; and accelerating the delivery of new urban communities, building on the successes in Clonburris and Adamstown.

Delivering infrastructure — such as water, wastewater, electricity capacity and roads — is essential to supporting new housing developments. By investing in infrastructure, Government will ensure that more land is shovel ready when needed, creating a conducive environment for housing development. Key actions include investing a total of €12.2 billion secured for the water sector; allocating €3.5 billion in equity funding to grid infrastructure between 2026 and 2030; introducing a €1 billion Infrastructure Investment Fund and fully embedding the Housing Activation Office to enhance collaboration and co-ordination across infrastructure providers.

2. Create the conditions to attract the required investment.

3. Increase skills and support the adoption of Modern Methods of Construction in the residential construction sector.

4. Work toward ending dereliction and vacancy.

The re-use and regeneration of vacant and derelict properties in villages, towns and cities provide much needed housing and transforms and revitalises communities. Key actions include introducing a new derelict property tax, administered and collected by the Revenue Commissioners; bringing back a total of 20,000 homes into use, supported by the Vacant Property Refurbishment Grant; and a strengthened and extended Living City Initiative, now including all residential properties built before 1975

Pillar 2 - Supporting People sets out a series of key actions that work towards ending homelessness, support affordability and address the housing needs of people as they progress through life. In partnership with local authorities, the LDA and AHBs, the Plan will address the needs of the most vulnerable in our communities, make buying and

renting homes more affordable and support the development of villages, towns and cities across the country.

Key Priorities

1. Focus on ending homelessness, deliver homes for older people and support social inclusion.

2. Deliver an average of 12,000 new social homes every year over the lifetime of the Plan.

Government is committed to providing record levels of new social homes and to strengthening the management and maintenance of existing social housing so that more households have access to good quality homes. Key actions include introducing a new single stage approval for applicable social housing projects; expanding and streamlining the operation of the Land Acquisition Fund; financially incentivising local authorities to exceed annual 'own build' social housing targets; and ensuring the right mix of social homes is delivered by local authorities, AHBs and the LDA to meet the specific needs identified through strengthened Housing Delivery Action Plans.

3. Promote affordable homeownership, protect renters and make buying and renting homes more affordable.

4. Invest in the built environment of towns, villages and cities across the country to enhance community well-being.

The planned growth of rural and urban communities is essential to meet the needs of a changing society. A significant focus has been placed on enhancing the lives and wellbeing of those who make their homes in existing communities in our villages, towns and cities by addressing challenges such as population decline and economic stagnation. Key actions include supporting small and medium sized builders to develop new mixed tenure communities on serviced sites in towns and villages; supporting affected communities through the implementation of Defective Concrete Block and Defective Apartment Remediation Schemes; publishing a National Planning

Statement on rural housing; and providing the funding needed to advance the Town Centre First Model to ensure a high quality of life for those who live in rural towns.

5.1.3. Sustainable Residential Development and Compact Settlement Guidelines 2024

These Guidelines set out national planning policy and guidance in relation to the creation of settlements that are compact, attractive, liveable and well designed. There is a focus on the renewal of settlements and on the interaction between residential density, housing standards and placemaking to support the sustainable and compact growth of settlements.

Table 3.1 of the Guidelines identifies areas and density ranges for Dublin and Cork City and Suburbs and confirms that sites should aim to achieve a density of 50-250 units per hectare (net) in respect of City-Urban Neighbourhoods.

Development standards for housing are set out in Chapter 5, including:

1. SPPR 1 in relation to separation distances (16 m above ground floor level),
2. SPPR 2 in relation to private open space for houses (2-bed 30 m²; 3-bed 40 m²; 4+bed 50 m²),
3. SPPR 3: In city centres and urban neighbourhoods of the five cities, defined in Chapter 3 (Table 3.1 and Table 3.2) car-parking provision should be minimised, substantially reduced or wholly eliminated. The maximum rate of car parking provision for residential development at these locations, where such provision is justified to the satisfaction of the planning authority, shall be 1 no. space per dwelling.
4. SPPR 4 in relation to cycle parking and storage. All new housing schemes (including mixed-use schemes that include housing) include safe and secure cycle storage facilities to meet the needs of residents and visitors.

Section 4.4 of the Guidelines set out Key Indicators of Quality Design and Placemaking. It considers that achieving quality urban design and creating a sense of place is contingent on the provision of an authentic identity that is specific to the settlement, neighbourhood or site in question. Section 4.4 (V) relates to responsive built form.

Policy and Objective 4.2 states that it is a policy and objective of these Guidelines that the key indicators of quality urban design and placemaking set out in Section 4.4 are applied within statutory development plans and in the consideration of individual planning applications

Policy and Objective 5.1 relates to public open space provision and requires development plans to make provision for not less than 10% of the net site area and not more than a minimum of 15% of the net site area save in exceptional circumstances. Sites with significant heritage or landscape features may require a higher proportion of open space.

5.1.4. Urban Development and Building Heights, Guidelines for Planning Authorities (2018)

The

Building Heights Guidelines state that increased building height and density will have a critical role to play in addressing the delivery of more compact growth in urban areas and should not only be facilitated, but actively sought out and brought forward by our planning processes, in particular by Local Authorities and An Bord Pleanála. These Guidelines caution that due regard must be given to the locational context and to the availability of public transport services and other associated infrastructure required to underpin sustainable residential communities.

5.1.5. Ministerial Guidelines

Having

regard to the nature of the proposed development and to the location of the appeal site, I consider the following Guidelines to be pertinent to the assessment of the proposal:

- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DoHLGH, 2023).
- Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities (2021).
- Quality Housing for Sustainable Communities - Best Practice Guidelines for Delivering Homes Sustaining Communities (2007).

I note that the *Planning Design Standards for Apartments, Guidelines for Planning Authorities* were published on 8th of July 2025. Section 1.1 of the guidelines state that they only apply to planning applications submitted after the publication of the guidelines. I am therefore satisfied that these guidelines are not relevant to the current appeal.

5.1.6. **Climate Action Plan 2025**

The

2025 Climate Action Plan builds upon last year's Plan by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings and it should be read in conjunction with Climate Action Plan 2024. The 2025 Plan provides a roadmap to deliver on Ireland's climate ambition. The expected outcome of the 2025 plan seek for the continued cross-organisational cooperation which will help to deliver Irelands climate goals and Improved monitoring and reporting structures (a lower number of high impact actions) should help streamline the reporting process and make it easier to identify challenges as they arise.

5.1.7. **National Biodiversity Plan 2023-2030**

The National Biodiversity Plan sets the national biodiversity agenda for the period 2023-2030. The plan strives for a “whole of government, whole of society” approach to the governance and conservation of biodiversity. The aim is to ensure that every citizen, community, business, local authority, semi-state and state agency has an awareness of biodiversity and its importance, and of the implications of its loss, while also understanding how they can act to address the biodiversity emergency as part of a renewed national effort to “act for nature.”

The plan has identified 5 objectives which include for:

1. Adopt a Whole-of Government Whole-of-Society Approach to Biodiversity;
2. Meet Urgent Conservation and Restoration Needs;
3. Secure Nature’s Contribution to People
4. Enhance the Evidence Base for Action on Biodiversity; and
5. Strengthen Ireland’s Contribution to International Biodiversity Initiatives.

5.2. Local Policy: Dublin City Development Plan 2022-2028

5.2.1. The subject site is zoned Z4 – Key Urban Villages and Urban Villages, with the objective ‘To provide for and improve mixed-services facilities.’

5.2.2. **Chapter 3:** Climate Action contains the Council’s policies and objectives for addressing the challenges of climate change through mitigation and adaptation. The relevant policies from this section include:

- CA3: Climate Resilient Settlement Patterns, Urban Forms and Mobility.
- CA8: Climate Mitigation Actions in the Built Environment.
- CA9: Climate Adaptation Actions in the Built Environment.
- CA24: Waste Management Plans for Construction and Demolition Projects.

5.2.3. **Chapter 4:** Shape and Structure of the City, sets out the Council’s strategy to guide the future sustainable development of the city. The objective is to ensure that growth is directed to, and prioritised in, the right locations to enable continued targeted investment in infrastructure and services and the optimal use of public transport. The relevant policies from this chapter are:

- SC5: Urban Design and Architectural Principles.
- SC10: Urban Density.
- SC11: Compact Growth.
- SC13: Green Infrastructure.
- SC14: Building Height Strategy.
- SC15: Building Height Uses.

- SC16: Building Height Locations.
- SC19: High Quality Architecture.
- SC20: Urban Design.
- SC21: Architectural Design.

5.2.4. **Chapter 5:** Quality Housing and Sustainable Neighbourhoods seeks the provision of quality, adaptable homes in sustainable locations that meet the needs of communities and the changing dynamics of the city. The delivery of quality homes and sustainable communities in the compact city is a key issue for citizens and ensuring that Dublin remains competitive as a place to live and invest in. The relevant policies from this chapter include:

- QHSN6: Urban Consolidation.
- QHSN10: Urban Density.

5.2.5. **Chapter 8:** Sustainable Movement and Transport, seeks to promote ease of movement within and around the city and an increased shift towards sustainable modes of travel and an increased focus on public realm and healthy placemaking, while tackling congestion and reducing transport related CO2 emissions.

5.2.6. **Chapter 9:** Sustainable Environmental Infrastructure and Flood Risk, aims to address a broad range of supporting infrastructure and services including water, waste, energy, digital connectivity, and flood risk/surface water management. The relevant policies of this section are:

- SI14: Strategic Flood Risk Assessment.
- SI15: Site Specific Flood Risk Assessment.

5.2.7. **Chapter 15:** Development Standards contains the Council's Development Management policies and criteria to be considered in the development management

process so that development proposals can be assessed, both in terms of how they contribute to the achievement of the core strategy and related policies and objectives. Relevant sections of Chapter 15 include (but are not limited to):

Table 15-1: Thresholds for Planning Applications

15.4: Key Design Principles.

15.5: Site Characteristics and Design Parameters.

15.6: Green Infrastructure and Landscaping.

15.9: Apartment Standards

15.16 Sustainable Movement and Transport

15.17 Public Realm

15.18: Environmental Management.

5.2.8. Relevant Appendices include:

Appendix 3: Achieving Sustainable Compact Growth sets out the height strategy for the city, with criteria for assessing higher buildings and provides indicative standards for density, plot ratio and site coverage.

Appendix 5: Transport and Mobility: Technical Requirements

Appendix 11: Technical Summary of DCC Green and Blue Roof Guide

Appendix 12: Technical Summary of DCC Sustainable Drainage Design and Evaluation Guide (2021)

Appendix 13: Surface Water Management Guidance

5.3. **Natural Heritage Designations**

The site is not within or immediately adjacent to any European Sites. The nearest European Site is the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) located c 0.66km to the south-east.

6.0 **EIA Screening**

The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

This is a first party appeal against the decision of Dublin City Council to refuse permission for the proposed development. The grounds of appeal may be summarised as follows:

1. Introduction

- Permission was refused on the basis of design elements that could have been addressed by Further Information.
- Commercial unit within Block A provides an active use onto Fairview Avenue Lower.
- The appeal is based on the provision of an amended design option wherein the scheme is altered as follows:
 - Block B height reduced from six storey over basement to four storey over basement.
 - Roof terraces (cumulatively measuring 117 sqm) provided at each block.

- Four apartments are omitted and the revised proposal provides for 21 units, comprising six no. studios, eight no. 1 bed units, seven no. two bed units.

2. Refusal Reason 1 - Density

- It could be justified that the highly accessible site falls within the city centre density ranges as set out in the *Sustainable Residential Development and Compact Settlement Guidelines (2024)* with a density range of 100-300 units per hectare (dph (net)). More appropriate perhaps to place the site within the context of an urban neighbourhood (density range of 50-250 dph (net)).
- Amended design option proposes 21 units with a reduced density of 231.8 dph (net) and accords with density range of urban neighbourhoods.
- A precedent case (ABP Ref. 308905) whereby a density of 225 dph (net) was achieved is relevant.

3. Refusal Reason 2: Neighbouring Residential Amenity

- Fairview Avenue Lower: Block A rises from 10.8m to 13.8m relative to the heights of Nos. 5-8 Fairview Avenue Lower, which appear to rise to 9.25m and the separation distance between Block A and these opposing houses prevents undue overbearing impacts.
- Block B is appropriately obscured by Block A.
- In terms of potential for overlooking, a separation distance in excess of 12.6m is achieved between front elevation of Block A and opposing houses. This is considered appropriate within the urban context of the site and in the absence of specific guidance as to what constitutes appropriate separation distances between opposing upper floors at front of residential buildings.
- Merville Avenue: Block B would be partially obscured from No. 36 – 37 Merville Avenue by the existing building to the east of the subject site. No. 37 is orientated on a north-south axis, with no windows on its western elevation. Proposal would have an imperceptible overbearing impact on No. 37, which is served with two areas of private open space (one south-facing and one west-facing). The west facing garden is less usable than the south-facing garden, given its orientation, and it is not considered that the proposal would present any undue overbearing impact

on this amenity space. Due to the orientation of the proposed development, overlooking of the western garden is not possible save for obscure angles.

- No. 36 is orientated on an east – west axis; windows on the western elevation are directed away from the proposed development. The proposal, as moderated for the purposes of the appeal will not cause undue overbearing impacts on the garden space.

4. Refusal Reason 3: Visual Amenity

- Proposed development is appropriate in the context of views from Fairview Avenue Lower with the scheme reading as a contemporary addition to the local streetscape. From the wider area there is no undue visual impact. Amended montage imagery provided.

5. Refusal Reason 4: Commercial Use

- Proposed commercial use intended to be a gym and it is reasonable that accessible access is provided via a lift.
- Claim that the proposal provides limited street and public realm enhancement along Fairview Avenue Lower is refuted. A modern aesthetic with a high standard of architecture is proposed in place of a car park which reads as an eyesore.
- The commercial use, while set below street level provides appropriate animation and its location is an appropriate transition to the more commercial southern junction of the avenue with Fairview's main thoroughfare.
- A larger more prominent commercial use at this location would not be commercially viable and would likely remain vacant and therefore fail to provide any meaningful relative increase in the animation of the subject site.

6. Refusal Reason 5: Separation Distances / Communal space

- A minimum separation distance of 12.8m above ground floor levels is achieved with regards to opposing windows serving habitable rooms between the blocks. Windows serving living / kitchen / dining rooms do not directly oppose each other. Direct views towards opposing windows are directly obscured by balconies, preventing views from Blocks A to B and vice versa, ensuring privacy of residents.

- Communal amenity space for an urban infill scheme on lands up to 0.25 ha may be relaxed subject to overall design quality. 219 sqm of communal open space is provided; all units provide almost double the required provision of private amenity space. Each unit exceeds all minimum standards. Any perceived shortfall in the quality of provided communal open space is justified by its over provision and design quality of the scheme.
- Roof terraces provided as part of the amended scheme provide the entire quantum of communal amenity space and are not overshadowed. There is scope to revise the ground level courtyard to improve privacy of private amenity spaces and this can be addressed by condition.

7. Other matters

- Proposal accords with the NPF and constitutes the efficient use of serviced land, achieving an appropriate balance between density and safeguarding the visual and residential amenities of the area.
- Proposal complies with the *Urban Development and Building Heights - Guidelines for Planning Authorities* (2018) including the Development Management Criteria set out in Section 3.2 SPPR 1 applies, noting the proposed development is proximate to a variety of public transport networks.
- Proposal complies with Development Plan in terms of site coverage and plot ratio. Noted that higher plot ratio and site coverage may be permitted in circumstances including where the proposal adjoins public transport corridors, an appropriate mix of residential and commercial units are offered, and to facilitate the comprehensive redevelopment of the site.

Revised drawings, plans, Unit Calculation Sheet and Photomontages are submitted with the appeal.

7.2. Planning Authority Response

A response from the planning authority was received on 9th October 2024 which requests that the Council's decision to refuse permission is dph (net)eld. It further states that if permission is granted, the following conditions should apply:

- Section 48 development contribution.

- Payment of a bond.
- Contribution in lieu of private open space.
- A naming and numbering condition.
- A management company condition.

7.3. **Observations**

Three valid observations on foot of the first party appeal against the decision of the planning authority have been received. The matters raised in each submission are summarised as follows:

1. Lorna Kane, Gavin Horan and Family of 36 Merville Avenue, Dublin 3.

Excessive density and overdevelopment

- Revised proposal has a density of 231.8 dph (net) significantly exceeding 60-150 dph (net) for an urban village in the City Development Plan. This would result in undue strain on local amenities and infrastructure. A reduction in density to align with the Development Plan should be required.
- Availability of public transport should not override the necessity for balanced, sustainable development that accords with the Z4 zoning objective.

Visual impact, Height and Scale

- Although Block B is reduced by two storeys which results in a four storey building with added roof terraces, the height remains inconsistent with surrounding two storey dwellings on Merville Avenue. The Building Height Strategy in the City Plan notes that new developments to respect the prevailing building heights in established residential areas.
- The proposed scale and massing have a visually disruptive impact when viewed along the R105 and from Merville Avenue. Revised plans have not sufficiently mitigated the visual intrusion and the proposal detracts from the character of the area. Height of Block B should be further reduced along with increased setbacks.

Overlooking, loss of privacy

- The proposed development overlooks the garden, kitchen, main living areas and attic bedroom skylights associated with 36 Merville Avenue. Block B is situated only 3.6m from the boundary. The light study is not updated to consider the revised proposal.
- Increased setbacks, reconfiguration of windows, use of obscure glazing and elimination of roof terraces are required to prevent overlooking impacts leading to a loss of privacy.

Communal amenity space

- Usability of roof terraces questioned.
- Lack of high quality, accessible amenity space at ground level is problematic and is in contravention of Apartment Guidelines.
- Amenity spaces should meet required standards and provide genuine value to residents.

Public realm, accessibility concerns and parking

- Modifications to include public realm should be required. Footpath along Fairview Avenue remains just 0.9m wide at its narrowest point, below the 1.8m minimum as per DMURS. Boundary walls proposed will make this constraint permanent, impacting on pedestrians and those with limited mobility. Inconsistency with the Council's objectives of promoting inclusive urban environment.
- Commercial unit remains below street level limiting its contribution to an active streetscape.
- Inadequate parking proposed (21 spaces for 21 units).

2. Colum O'Keeffe and Claire O'Leary, 38 Merville Avenue, Dublin 3

- Would welcome redevelopment of the site, provided it is appropriate to the surrounding area and does not negatively impact on existing properties / residents.
- Concerns remain in relation to the height of the proposed development. 12 windows on the rear block (Block B) are adjacent to 36 Merville Avenue

substantially impacting on the privacy and amenity of residents. No proposed boundary treatments will mitigate this.

- Without an updated sunlight study it is difficult to understand the anticipated impact of the proposed development. It appears likely that the mass of the proposed development would still negatively impact light to the adjacent properties, particularly numbers 36 and 37 Merville Avenue.
- Proposed development will directly impact the use of the observer's rear garden (No. 38 Merville Avenue).
- The plans do not include the redevelopment of the whole site of the old cinema or the full on-site structure. They reflect a piecemeal proposal.
- Existing access road requires surfacing remediation but is outside the application site. The red line boundary as proposed offers less scope for the integration of the development into its surroundings.
- Unclear why existing structures do not form part of the planning application and are treated separately.
- Also unclear how the existing structures and proposed structures would integrate and how excluding some of the built elements from the application is appropriate for the site.
- A comprehensive solution for the entire site should be provided
- Proposed development will negatively impact visual continuity of building facades along Fairview Strand and Fairview Avenue.
- Proposed building line does little to improve tight access along the street for pedestrians and vulnerable users.
- While reference is made by the applicant to the site's accessibility and travel times to the city centre, the immediate context of the area is primarily low-rise terraced and semi-detached housing. Local road and parking infrastructure in Marino and directly adjoining the site is insufficient to support the proposed higher density.

3. Jennifer Billings, 31 Merville Avenue, Dublin 3

- The wording of the planning application / description of development is misleading in terms of the building heights and number of storeys.
- Section drawings omitted outlines and heights.
- While Block B is reduced in height, overall height is still out of scale and out of character with neighbouring property.
- Rooftop garden will reinstate one of the two storeys proposed to be removed from Block B.
- Lack of setback at northern boundary line. Windows will overlook adjoining properties.
- No further consideration has been given to the lack of on-site car parking and its impact on the surrounding area.
- Basement and ground floor of Block B are recessed under upper floors, with upper floors oversailing the existing Tesco store.
- Accuracy of site outline is queried.

This observer has included their original submission made on the proposal to the planning authority, which is summarised as follows:

- Misleading development description in relation to heights of Blocks A and B.
- Proposal out of character and out of scale with area.
- Visually imposing development.
- Overlooking impacts.
- Insufficient car parking provided.
- Misleading section drawings.

8.0 Assessment

My report will assess the proposed development as applied for along with the revised design as put forward in the planning appeal.

Having reviewed the first party appeal and all other documentation on file including the reports of the local authority, and having inspected the site, and having regard to the

relevant local and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Density, Height and Scale
- Residential Amenities
- Visual Impact
- Commercial Unit
- Other Matters

8.1. Principle of Development

8.1.1. The appeal site is located at 45-47 Fairview Avenue Lower, Fairview, Dublin 3. The site is zoned as Objective Z4 - Key Urban Villages / Urban Villages in the Dublin City Development Plan 2022-2024 where the key objective is 'To provide for and improve mixed-services facilities.' Various commercial uses and residential development are listed as permissible uses under this zoning objective.

8.1.2. Fairview is not included in the listing of Key Urban Villages as set out under section 14.7.4 of the current City Development Plan and therefore it is identified as an Urban Village.

8.1.3. I consider the proposed mixed-use development to be acceptable in principle having regard to the Z4 land use zoning objective which pertains to this well located and accessible site, subject to assessment against the relevant plans and policies if the Dublin City Development Plan 2022-2028.

8.2. Density, Height and Scale

8.2.1. The first reason for refusal as set out by the planning authority relates to the density of the development on the site, which is considered to be excessive and contrary to both local and national policy objectives and also contrary to the proper planning and sustainable development of the area.

8.2.2. The appellant considers that it could be justified the highly accessible site falls within the city centre density ranges 100-300 dph (net) as detailed in the *Sustainable Residential Development and Compact Settlement Guidelines* (2024), although indicates the appropriate density range would perhaps be 50-250 dph (net) within the context of an urban neighbourhood. In this regard the appellant points to the revised proposal of 21 units submitted with the appeal with a stated density of 231.8 dph (net). Reference is also made to a precedent case whereby a density of 225 dph (net) was achieved under ABP Ref. 308905.

8.2.3. The proposed development has a stated area of 0.0906 ha and permission as initially applied for sought 25 no. apartment units. Revised plans and proposals for 21 no. apartment units are submitted with the appeal. Appendix B of the *Sustainable Residential Development and Compact Settlement Guidelines* (2024) notes that '*A net site density measure is a more refined estimate than a gross site density measure and includes only those areas that will be developed for housing.*' In this context, the portion of lands used for commercial development, in this case 72 sqm, are deducted from the overall site area, leaving an applicable net site area of 0.0834 ha. Based on this site size, the resultant density for the proposal as applied for (25 units) and the revised proposal submitted in the appeal (21 units) is 299.76 dph (net) and 251.79 dph (net), respectively.

8.2.4. Section 3.2 '*Density*' of Appendix 3 (*Achieving Sustainable Compact Growth Policy for Density and Building Height in the City*) of the Dublin City Development Plan 2022-2028 notes that the highest densities should be located at the most accessible and sustainable locations. It emphasises that there should be a focus not just on maximising density to maximise yield but on a range of qualitative criteria and other factors including architecture, community facilities and quality placemaking. The density of a proposal should respect the existing character, context and urban form of an area and protect existing and future residential amenity. Public transport accessibility and capacity also determine the appropriate density permissible.

8.2.5. Table 1 '*Density Ranges*' of Appendix 3 identifies a net density range of 60-150 for sites located within the Key Urban Villages, such as the proposed development site. However, I note the text below Table 1 in Appendix 3 which provides that schemes of

increased density are often coupled with buildings of increased height and scale and in such instances where buildings and density are significantly higher and denser than the prevailing context, the performance criteria set out in Table 3 (*Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale*) shall apply.

- 8.2.6. Table 3.1 included in the *Sustainable Residential Development and Compact Settlement Guidelines* (2024) relates to areas and density ranges in Dublin and Cork City and Suburbs. I concur with the appellant that the more appropriate category applicable to the subject site is that of 'City-Urban Neighbourhoods,' where residential densities in the range 50-250 dph (net) shall generally be applied.
- 8.2.7. The proposed density for 25 units as applied for, which equates to 299.76 dph (net), is significantly above the density range envisaged for Key Urban Villages as set out in Table 1 of Appendix 3 of the City Development Plan and well in excess of the 50-250 dph (net) range identified in Table 3.1 of the *Sustainable Residential Development and Compact Settlement Guidelines*. The scheme as applied for is also significantly denser than the existing prevailing character and pattern of development along this part of Fairview Avenue Lower and adjoining lands at Merville Avenue which comprise predominantly residential properties with prevailing heights of two and three storeys. The existing disused commercial building on the site is three storeys in height, as is that of the adjoining public house to the south. The revised proposal for 21 units put forward in the appeal equates to 251.79 dph (net) is also significantly above the density range for Key Urban Villages as set out in the City Development Plan and is above the 50-250 dph (net) range identified in Table 3.1 of the Guidelines.

Height and Scale

- 8.2.8. Section 4 of Appendix 3 of the City Development Plan addresses how to achieve sustainable height and density. The proposed mixed-use development as applied for comprises two blocks, Block A, a four storey over basement mixed-use block with one commercial unit and nine apartments and Block B, a six storey over basement block with 16 no. apartments. This proposal is significantly above the immediate prevailing height context of the area which is two to three storey buildings. The revised proposal with the appeal involves, *inter alia*, reducing the number of apartments in Block B to twelve along with a reduced height of that block to four storeys over basement and

addition of roof terraces to Blocks A and B. This proposal is also above the prevailing two to three storey height of the area.

8.2.9. Section 4 of the City Development Plan also refers to the *Urban Development and Building Height Guidelines for Planning Authorities (2018)*, noting that heights of at least three to four storeys coupled with appropriate density in locations outside what is defined as city centre (including suburban areas) will be supported. Section 1.10 of the *Building Height Guidelines* also states that within the canal ring in Dublin it is appropriate to support the consideration of building heights of at least 6 storeys at street level as the default objective, subject to keeping open the scope to consider even greater heights by the application of certain criteria. I note however that the City Development Plan emphasises that in considering locations for greater heights and density, schemes must have regard to local prevailing context, particularly in lower scaled areas of the city where potential impacts on residential and visual amenity, in addition to functional, environmental and cumulative impacts of increased building height must be considered.

8.2.10. Having regard to the foregoing, the deviation of both the development as applied for and the revised proposal submitted at appeal stage in terms of density, height and scale from the surrounding area, together with height and density ranges identified within Section 28 Guidelines and the City Development Plan, both proposals are required to be considered in terms of Table 3 of Appendix 3 of the Dublin City Development Plan 2022-2028. It includes factors such as adequate infrastructural capacity, appropriate design response, appropriate housing mix and proximity to high quality public transport, employment and community services.

8.2.11. Set out in Tables 1 and 2 below are my assessments of the proposals as initially applied for and as revised at appeal stage, respectively, against the 10 criteria of Table 3 in Appendix 3 of the City Development Plan.

Table 1: Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale - Development as applied for.

Criteria 1: To promote development with a sense of place and character	The proposal would not integrate well within the infill site or the streetscape.
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	<p>The scale and massing of the proposed development would be out of character with the immediate area. The density proposed for this constrained urban brownfield infill site is excessive at 299.76 dph (net), significantly exceeding density range requirements / guidance in the City Development Plan (60-150 for Key Urban Villages) and this would constitute a Material Contravention of Appendix 3 of the Dublin City Development Plan 2022-2028. The proposed density is also contrary to the <i>Sustainable and Compact Settlements Guidelines for Planning Authorities (2024)</i>.</p> <p>In my view, Block B located to the rear of the site with a height of 6 storeys over basement is out of place and out of character with the immediate area, where the prevailing pattern of development is two and three storey buildings. Block B is excessive in scale and height. The design, height and scale of this block has implications in terms of impacts on the residential amenities of residential properties, particularly at Nos. 35 and 36 Merville Avenue, having regard to the separation distances proposed and position of this block relative to the boundaries. This is further addressed in section 8.3 of my report.</p> <p>There is Georgian character along Fairview Avenue Lower most notably in the form of the residential properties opposite the site which are of three storeys above basement design. In my view Block A, a four storey</p>
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	<p>block over basement located at the front of the site, and built up to the existing footpath, is overbearing on the street and on the housing opposite.</p> <p>There are also potential overlooking impacts arising between Block A and the housing opposite its front façade. Having regard to its position on the site and the lack of set-back, Block A would appear visually dominant in the streetscape.</p> <p>Proposed pattern of fenestration and unrelieved balconies on the Blocks are at odds with the character of the area.</p>
<p>Criteria 2: To provide appropriate legibility</p>	<p>The subject site comprises an urban brownfield infill site. The site addresses Fairview Avenue Lower which is a one-way street with parking spaces / loading areas on both sides.</p> <p>In my view the proposal due to increased density would fail to positively contribute to the streetscape and public realm or suitably respond to the immediate context of the area on account of the inappropriate juxtapositions between the proposed and established building heights.</p> <p>The proposed development, and in particular Block B, would also be very noticeable and prominent in the wider area, as indicated in the CGIs / Visuals submitted with the planning application.</p>

	I do not consider that the proposed development would positively contribute to the legibility of the area.
Criteria 3: To provide appropriate continuity and enclosure of streets and spaces	I am concerned that the height, scale and massing of the proposed development, in particular Block B would be out of character and would not be an appropriate response to a site where the prevailing character and pattern of development in the area two and three storey buildings. The depth of Block A is considered excessive. Its position, built up to the footpath edge prevents public realm improvements at this location.
Criteria 4: To provide well connected, high quality and active public and communal spaces.	<p>Having regard to the constrained size of this urban brownfield infill site there is very limited scope to provide any meaningful public open space.</p> <p>Based on the number and typology of apartments proposed, total communal space in the amount of 135 sqm is required. 219 sqm of communal open space is stated to be provided. This comprises a landscaped amenity space / courtyard between the Blocks and a walkway from the street to this area. In my view the walkway, by reason of its limited width and purpose should not be considered to constitute communal open space. There is also no boundary or planting strip proposed between the communal space and ground floor terraces, resulting in overlooking impacts. Furthermore, I note the absence of analysis in the submitted shadow study relating to the courtyard area and the</p>

	<p>planning authority's conclusion that it is likely to be substantially overshadowed throughout the year. In my view, the standard and usability of this proposed communal open space would not be acceptable (See section 8.3 below).</p>
<p>Criteria 5: To provide high quality, attractive and useable private spaces</p>	<p>Private amenity spaces in the form of balconies and terraces in excess of minimum quantitative standards as set out in the Apartment Guidelines 2023 are provided. These are provided on the southern elevation of Block A and on the western side of Block B.</p> <p>I have a concern that the separation distances (approximately 10.3m) between Block A rear windows (serving living areas and bedrooms) and the western facing balconies of Block B are inadequate and would result in overlooking impacts between the blocks leading to a loss of privacy. Similarly, there are concerns of overlooking impacts arising from street-facing Block A upper floor windows onto existing residential properties opposite the site, (specifically Nos. 5, 6, 7 and 8 Fairview Avenue Lower) given the approximate separation distance of 12.6m.</p>
<p>Criteria 6: To promote mix of use and diversity of activities</p>	<p>Residential and commercial uses are proposed which are acceptable in principle on this infill site given the Z4 zoning objective which applies.</p> <p>One commercial unit, identified as a potential gym, is proposed at Level 0, below</p>

	<p>street level. In my view the location of this unit at basement level is contrary to Development Plan Policy CCUV23 <i>Active Uses</i> which seeks to promote active uses at street level in Key Urban Villages and urban villages.</p>
<p>Criteria 7: To ensure high quality and environmentally sustainable buildings.</p>	<p>72% of proposed units are dual aspect.</p> <p>The Engineering Design Services Report includes a Flood Risk Assessment which finds the site to be at potential flood risk. However, from mapping available the flood levels to be considered for the 1% AEP MRFS Fluvial and 0.5% AEP MRFS Coastal events are taken to be the proxy 01.% AEP Current Scenario flood event levels which are 3.33m AOD. The site design is stated to be such that there are no vulnerable uses below this flood level. Lower ground floor level will be below the potential future flood level, with that area designed with a flood sump and pump for removal of flood water should an event occur. Storage rooms at lower ground floor level are below the 3.33m level and will be flood resilient.</p> <p>A Lifecycle Report should be submitted for all apartment developments according to Table 15-1 '<i>Thresholds for Planning Applications</i>' however this is not provided.</p> <p>No Basement Impact Assessment (BIA) is provided, contrary to Table 15-1.</p>

	<p>A sustainability report/energy statement was not received with the application.</p> <p>A Service Delivery and Access Strategy should be provided for all mews / backland dwellings according to Table 15-1 '<i>Thresholds for Planning Applications</i>' however this is not provided.</p> <p>The application is not accompanied by a Construction Management Plan (CMP). It is considered that a CMP would be required in order to undertake the development proposed given the constrained nature of the site and the narrow configuration and one-way nature of Fairview Avenue Lower. This would be required to be submitted by way of condition to be agreed with the Planning Authority in the event the Commission was minded to grant permission.</p>
<p>Criteria 8: To secure sustainable density, intensity at locations of high accessibility</p>	<p>The proposed development is located in a highly accessible area with easy access to high frequency public transport services.</p> <p>However, the multiple issues identified by the TPD (see section 3.2.2 above) would need to be addressed.</p> <p>In my view, the development of this site should reflect a balance between its location proximate to high frequency transport services and the prevailing character of the area which includes two and three storey residential developments adjoining the site.</p>

<p>Criteria 9: To protect historic environments from insensitive development</p>	<p>As detailed under Criteria 1 above, there is Georgian character along Fairview Avenue Lower most notably in the form of the residential properties opposite the site which are of three storeys above basement design. The proposed elevational treatment fails to have regard to the established urban grain and architectural language which has been established within the immediate context of the site.</p> <p>Given the approximate separation distance of c 12.6m between the front elevation of Block A and those of Nos. 5, 6, 7 and 8 Fairview Avenue Lower opposite the site, I have a concern that overlooking and overbearing impacts on these existing residential properties would arise.</p>
<p>Criteria 10: To ensure appropriate management and maintenance</p>	<p>No Operational Waste Management Plan is provided. Matters of security, management of public/communal areas, waste management, servicing and delivery can all be satisfactorily addressed by condition in the event that the Commission grant permission.</p> <p>I concur with the input from TPD that items such as the site's vehicular access from third party lands (including a right of way), potential impact of existing informal parking area at the site's vehicular access, the sub-standard size of the loading bay, the absence of a servicing strategy plan, and the absence of a swept path analysis for a</p>

	refuse truck and delivery van, should be addressed.
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8.2.12. Having regard to the foregoing, my view is that the proposed development as applied for fails to comply with the performance criteria detailed within Table 3 of Appendix 3 of the City Development Plan. The proposed development, in terms of its density, scale and also the height of Block B would be inconsistent with the prevailing character of the immediate area.

8.2.13. Section 3.4 'Refining Density' of the *Sustainable and Compact Settlements Guidelines for Planning Authorities* affords an opportunity for developments to exceed the density ranges as identified in section 3.3 based on consideration of a number of criteria. This requires that the development as proposed complies with two steps as detailed in sections 3.4.1 and 3.4.2 of the Guidelines.

8.2.14. Step 1 states that lands within 1,000 metres (1km) walking distance of an existing or planned high-capacity urban public transport nodes will be considered. The subject site is located proximate to existing high capacity transport nodes and as such it complies with Step 1.

8.2.15. Step 2 relates to the consideration of the receiving environment and the positive impact the proposal would have upon it. It is stated that the development as proposed should not result in a significant negative impact on character (including historic character), amenity or the natural environment. Having regard to my findings reflected in Table 1 above, I consider that the proposed development would give rise to a detrimental impact on the local character having regard to the significant deviation from the established height in the form of the 6 storey Block B which would negatively impact on the residential amenities of adjoining residential units on Merville Avenue. The position of Block A to the front of the site would also impact on the residential amenities of existing residential units on the western side of Fairview Avenue Lower. Furthermore, the proposed elevational treatment fails to have regard to the established urban grain and architectural language which has been established within the

immediate context of the site which includes Georgian buildings opposite the appeal site. No Architectural Design Statement is provided with the application and in my view the overall design approach of the proposed development has failed to respond in a positive and proportionate way to the receiving context through site responsive design.

8.2.16. In terms of the development as originally applied for, which proposes a density significantly in excess of both that set out within the Dublin City Development Plan 2022-2028 and the *Sustainable and Compact Settlements Guidelines for Planning Authorities* I generally concur with the planning authority's first refusal reason. I conclude that the proposed development as applied for would be contrary to Table 3.1 and Section 3.4 of the *Sustainable and Compact Settlements Guidelines for Planning Authorities* (2024) and that it would constitute Material Contravention of Appendix 3 of the Dublin City Development Plan 2022-2028 due to the proposed density of 299.76 dph (net). I note the planning authority did not raise this issue of material contravention in its assessment.

8.2.17. Having regard to the above, the proposed development as applied for would represent overdevelopment of the subject site and I recommend that permission be refused.

8.2.18. **Table 2: Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale - Development as revised at appeal stage.**

Criteria 1: To promote development with a sense of place and character	The main revisions made to the proposed development as detailed in the appeal are as follows: <ul style="list-style-type: none">○ Block B height reduced from six storey over basement to four storey over basement.○ Roof top terraces provided at each block (cumulatively measuring 117 sqm).○ Four apartments are omitted from Block B and the revised proposal provides for
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	<p>21 units, comprising six no. studios, eight no. 1 bed units, seven no. two bed units.</p> <p>In my view, the revised development would not integrate well within the infill site or the streetscape. The scale and massing of the revised development would be out of character with the immediate area.</p> <p>The density proposed for this constrained urban brownfield infill site is excessive at 251.79 dph (net), significantly exceeding density range requirements / guidance in the City Development Plan (60-150 for Key Urban Villages) and this would constitute a Material Contravention of Appendix 3 the Dublin City Development Plan 2022-2028. The proposed density is also contrary to the <i>Sustainable and Compact Settlements Guidelines for Planning Authorities (2024)</i>.</p> <p>Block B located to the rear of the site is revised with a height of 4 storeys over basement. However, due to its position, proximate to the boundaries of rear gardens associated with Nos. 35 and 36 Merville Avenue, concerns remain in relation to impacts on residential amenity including overlooking and overbearing impacts. This is further addressed in section 8.3 of my report.</p> <p>There is Georgian character along Fairview Avenue Lower most notably in the form of the residential properties opposite the site which are of three storeys above basement design. The revised proposal submitted at appeal stage has not substantially amended</p>
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	<p>the design of Block A, a four storey block over basement mixed-use block other than the provision of a roof top terrace to facilitate communal open space. The position of Block A is unchanged at the front of the site, and built up to the existing footpath. It remains overbearing on the street and on the housing opposite. Potential overlooking impacts arise between Block A and housing opposite its front façade. Having regard to its position on the site and the lack of set-back, Block A would remain visually dominant in the streetscape.</p> <p>Proposed pattern of fenestration and unrelieved balconies on the Blocks are at odds with the character of the area.</p>
<p>Criteria 2: To provide appropriate legibility</p>	<p>The subject site comprises an urban brownfield infill site. The site addresses Fairview Avenue Lower which is a one-way street with parking spaces / loading areas on both sides.</p> <p>In my view, the revised proposal due to excessive density, massing and scale would fail to positively contribute to the streetscape and public realm or suitably respond to the immediate context of the area.</p> <p>The proposed development would be prominent in the immediate area, with Block A constructed at the edge of the existing footpath without any setback into the site. Block B is constructed too near (c 3.4m) the boundary of rear gardens associated with</p>

	<p>Merville Avenue resulting in negative impacts on residential amenity.</p> <p>I do not consider that the proposed development would positively contribute to the legibility of the area.</p>
<p>Criteria 3: To provide appropriate continuity and enclosure of streets and spaces</p>	<p>I am concerned that the scale and massing of the proposed development would be out of character and would not be an appropriate response to a site where the prevailing character and pattern of development in the area comprises two and three storey buildings. The depth of Block A is considered excessive. Its position up to the footpath edge prevents public realm improvements at this location.</p>
<p>Criteria 4: To provide well connected, high quality and active public and communal spaces.</p>	<p>Having regard to the constrained size of this urban brownfield infill site, there is very limited scope to provide any meaningful public open space.</p> <p>Based on the number and typology of apartments proposed, total communal space in the amount of 113 sqm is required. The revised proposal provides for a total of 117 sqm of communal open space across the development in the form of roof top terraces on each block. I have a concern that overlooking / perceived overlooking impacts would arise from the proposed roof top terraces on nearby residential development at Merville Ave and on the western side of Fairview Avenue Lower.</p>

<p>Criteria 5: To provide high quality, attractive and useable private spaces</p>	<p>Private amenity spaces in the form of balconies and terraces in excess of minimum quantitative standards as set out in the Apartment Guidelines 2023 are provided. These are provided on the southern elevation of Block A and on the western side of Block B. Concerns remain that the separation distances (approximately 10.3m) between Block A rear windows (serving living areas and bedrooms) and the western facing balconies of Block B are inadequate and would result in overlooking impacts between the blocks leading to a loss of privacy. Similarly, concerns remain in terms of overlooking impacts arising from street-facing Block A upper floor windows onto existing residential properties opposite the site, (specifically Nos. 5, 6, 7 and 8 Fairview Avenue Lower) given the approximate separation distance of c 12.6m.</p>
<p>Criteria 6: To promote mix of use and diversity of activities</p>	<p>Residential and commercial uses are proposed which are acceptable in principle on this infill site given the Z4 zoning objective which applies to the site.</p> <p>The revised proposal as submitted with the appeal has not altered the location of the proposed commercial unit, which is proposed at Level 0, below street level. In my view the location of this unit at basement level is contrary to Development Plan Policy CCUV23 <i>Active Uses</i> which seeks to promote active uses at street level in Key Urban Villages and urban villages.</p>

<p>Criteria 7: To ensure high quality and environmentally sustainable buildings.</p>	<p>72% of proposed units are dual aspect.</p> <p>A Lifecycle Report should be submitted for all apartment developments according to Table 15-1 '<i>Thresholds for Planning Applications</i>.' This report was not provided with the revised proposal submitted with the appeal.</p> <p>No BIA provided, contrary to Table 15-1.</p> <p>A sustainability report/energy statement was not received with the application or the revised proposal submitted at appeal stage.</p> <p>A Service Delivery and Access Strategy should be provided for all mews / backland dwellings according to Table 15-1 however this is not provided.</p> <p>The application is not accompanied by a Construction Management Plan. It is considered that a CMP would be required in order to undertake the development proposed given the constrained nature of the site and the narrow configuration and one-way nature of Fairview Avenue Lower. This would be required to be submitted by way of condition to be agreed with the Planning Authority in the event the Commission was minded to grant permission.</p>
<p>Criteria 8: To secure sustainable density, intensity at locations of high accessibility.</p>	<p>The proposed development is located in a highly accessible area with easy access to high frequency public transport services.</p>

	<p>However, the multiple issues identified in the report by the Roads, Streets and Traffic Department (see section 3.2.2 above) would need to be addressed.</p> <p>In my view, the development of this site should reflect a balance between its location proximate to high frequency transport services and the prevailing character of the area which includes two and three storey residential developments adjoining the site. I consider the site could accommodate increased densities subject to an appropriately designed scheme which has regard to the prevailing context and where potential impacts on residential and visual amenity are considered.</p>
<p>Criteria 9: To protect historic environments from insensitive development.</p>	<p>As detailed under Criteria 1 above, there is Georgian character along Fairview Avenue Lower most notably in the form of the residential properties opposite the site which are of three storeys above basement design. The proposed elevational treatment fails to have regard to the established urban grain and architectural language which has been established within the immediate context of the site which includes Georgian buildings opposite the appeal site.</p> <p>Given the approximate separation distance of c 12.6m between the front elevation of Block A and those of Nos. 5, 6, 7 and 8 Fairview Avenue Lower opposite the site, I continue to have a concern that overlooking</p>

	and overbearing impacts on these existing residential properties would arise.
Criteria 10: To ensure appropriate management and maintenance.	<p>No Operational Waste Management Plan is provided. Matters of security, management of public/communal areas, waste management, servicing and delivery can all be satisfactorily addressed by condition in the event that the Commission grant permission.</p> <p>I concur with the input from TPD that items such as the site's vehicular access from third party lands (including a right of way), potential impact of existing informal parking area at the site's vehicular access, the sub-standard size of the loading bay, the absence of a servicing strategy plan, and the absence of a swept path analysis for a refuse truck and delivery van, should be addressed.</p>

8.2.19. Having regard to the foregoing, it is my opinion that the revised proposal as submitted with the appeal fails to comply with the performance criteria detailed within Table 3 of Appendix 3 of the City Development Plan. The revised proposal in terms of its density, scale and massing would be inconsistent with the prevailing character of the area. I conclude that the revised proposal would be contrary to Table 3.1 and Section 3.4 of the *Sustainable and Compact Settlements Guidelines for Planning Authorities* and that it would constitute Material Contravention of Appendix 3 of the Dublin City Development Plan 2022-2028 due to the proposed density of 251.79 dph (net). As such, I consider that the revised proposal would represent overdevelopment of the subject site and I recommend that permission be refused.

Precedent

8.2.20. In assessing the density of the revised proposal, the appellant points to a previous decision, stated to be precedent case, whereby a decision was made to grant permission for a Strategic Housing Development (SHD) for 101 apartments in a 5-6 storey development at Glasnevin Autos, 54 Glasnevin Hill, Dublin 9 (ABP Ref. 308905 refers). The appellant states that the SHD is located in an area with comparatively limited building height relative to the subject site at Fairview Avenue Lower, with the site predominantly adjoined by two-storey buildings with a limited extent of three / four storey buildings. The appellant notes that the scheme approved under ABP Ref. 308905 provided a residential density of 225 dph (net) within a neighbourhood centre and that the appeal site is comparatively more urban, better served by public transport and accessible external spaces.

8.2.21. The lands applicable to ABP Ref. 308905 are, like the appeal site, located in an established urban area, where public transport is available and where community / social/recreational infrastructure is within walking distance. However, having examined this SHD case I note it is almost five times the size of the appeal site at 0.4496 ha. I note also that a different Development Plan (Dublin City Development Plan 2016-2022) was in force at the time when this SHD was granted permission in 2021. Furthermore, updated and revised guidelines relating to density and refining density parameters have been introduced in the form of the *Sustainable Residential Development and Compact Settlement Guidelines (2024)*.

8.2.22. Having regard to the foregoing I would not view the SHD permitted under ABP. Ref. 308905 in 2021 as a precedent case in terms of density. Furthermore, this appeal case must be assessed and determined on its own merits having regard to the sensitivity of the receiving environment and the specifics of the proposal.

8.3. Residential Amenities

8.3.1. The planning authority's second refusal reason considers that the proposed development by reason of its excessive height, scale, massing and density would seriously injure the residential amenities of existing properties in the area through overbearance and undue overlooking impacts. Specifically, concern in this regard is

referenced for nos. 36 and 37 Merville Avenue and nos. 5, 6, 7 and 8 Fairview Avenue Lower. The fifth refusal reason also considers that inadequate separation distances achieved between windows of habitable rooms between Blocks A and B would result in substandard levels of residential amenity for future occupants and prove contrary to SPPR 1 – Separation Distances as set out in the *Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (2024)*.

Nos. 5 to 8 Fairview Avenue Lower

- 8.3.2. These three-storey over basement residential properties opposite the appeal site form part of a Georgian terrace. The appellant considers that the separation distance between the proposed development and these properties at 12.6m is sufficient in an urban context to prevent overlooking and overbearing impacts and notes there is no guidance relating to minimum required separation distances between opposing front windows.
- 8.3.3. While I accept there is no particular guidance relating to required minimum separation distances between opposing front windows, having visited the site and its environs, my view is that undue overlooking impacts would be likely to occur between proposed Block A and the existing residential properties opposite the subject site, having regard to the c 12.6m separation distance proposed, which I consider to be insufficient. In my view it would be appropriate that Block A is repositioned deeper within the site and this would also allow for public realm improvements including footpath widening to occur which would facilitate the development.
- 8.3.4. In relation to the revised proposal submitted at appeal stage, introduction of a roof top terrace at Block A is proposed which, in my opinion, would give rise to overlooking impacts onto the Georgian terrace opposite the subject site. I also consider that having regard to the position of Block A on the site, overbearing impacts would remain from that building on existing housing opposite the site on the eastern side of the street.

Nos. 36 and 37 Melville Avenue

- 8.3.5. These properties comprise low rise two storey semi-detached houses and their respective rear gardens lie to the north and north-east of proposed Block B which has

a maximum flat level roof height of c 19.8m reducing to 16.8m at fifth floor level as per the proposal submitted with the application.

No. 37

- 8.3.6. The appellant notes that no. 37 Merville Avenue has no windows on its western elevation, that the house is served by two areas of private open space (one area at the west and one area at the south), with the west facing garden deemed to be less usable. The appellant does not foresee overbearing or overlooking impacts arising on the private amenity space of no. 37.
- 8.3.7. I note that proposed Block B is located approximately 5m south-west of the western garden boundary associated with no. 37 Merville Avenue. I do not concur with the appellant's analysis that the western garden of no. 37 is less usable than the southern garden, noting the overall unusual configuration of that site and restricted garden depths. Given the proximity of proposed Block B and its significant height rising to six storeys above partial basement, I consider that this Block would have an overbearing impact on the western private amenity space associated with no. 37. Having reviewed the floor plans provided in relation to Block B, I would not anticipate undue overlooking impacts arising onto the rear amenity spaces of no. 37.
- 8.3.8. Having regard to the revised proposal submitted at appeal stage which reduces the height of Block B to four storeys over partial basement and with a principal height of 13.8m, my view is that Block B, due to the substantial decrease in height does not have an overbearing impact on the amenity spaces of no. 37. However, due to the introduction of a roof-top terrace at Block B I would have a concern in relation to potential overlooking impacts onto the amenity spaces of no. 37.

No. 36

- 8.3.9. Part of proposed Block B is located approximately 3.7m south of the rear garden boundary of no. 36 Merville Avenue. The appellant notes that windows on the western elevation of no. 36 are oriented away from the proposed development.
- 8.3.10. Given the proximate location of proposed Block B relative to the boundary of no. 36 along with its height rising to five storeys with sixth storey setback, I consider this Block

would have an overbearing impact on no. 36 and its rear private amenity space. Some windows serving bedrooms and living areas on the upper floors of Block B would likely give rise to overlooking impacts onto the rear private amenity space of no. 36

8.3.11. Having regard to the revised proposal submitted at appeal stage which reduces the height of Block B to four storeys over partial basement and with a principal height of 13.8m, my view is that Block B would have an overbearing impact on no. 36. Having reviewed the floor plans submitted with the appeal overlooking opportunities onto the associated rear private open space is evident. Furthermore, due to the introduction of a roof-top terrace at Block B concerns remain in relation to potential overlooking impacts onto the private amenity space of no. 36.

Overshadowing

8.3.12. I note the concerns of observers relating to potential overshadowing impacts and the absence of a revised Daylight Analysis and Overshadowing Study in respect of the revised proposal submitted at appeal stage.

8.3.13. The Daylight Analysis and Overshadowing Study provided with the planning application analyses the access to daylight in respect of proposed residential units, assesses whether adjacent amenity areas achieve two hours of sunlight on March 21st, analyses the Vertical Sky Component (VSC) in respect of adjacent residential units to the east and west and finally provides shadow studies comparing shadowing from the existing scenario to the proposed scenario. The Study is prepared in accordance with 'British Standard: Lighting for Buildings - Part 2: Code of Practice for Daylighting' and 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' – Third Edition (BRE 2022).

8.3.14. In relation to the proposed apartment units, the study finds all spaces assessed comprising bedrooms, studios and kitchen / living / dining areas exceed target levels in the BS EN 17037:2018 standard and concludes that the proposed units provide an acceptable standard of amenity from a daylighting perspective.

8.3.15. Five amenity / garden areas outside the site, comprising the rear gardens of nos. 35, 36 and 37 Merville Avenue and two garden areas at Marino Court were analysed, to

determine if they receive a minimum of two hours of sunlight on 21st March in accordance with BRE requirements. Compliance in this regard is demonstrated in Section 3 of the Study.

8.3.16. Section 4 of the Study sets out the results of daylight access to existing buildings in the vicinity, including nos. 36 and 37 Merville Avenue and residential units opposite the site on Fairview Avenue Lower. The BRE recommendation is that a Vertical Sky Component (VSC) value of greater than 27% is acceptable. The results show that all assessed windows are above the 27% value recommended indicating sufficient daylight access to the examined windows post development.

8.3.17. While I acknowledge the observers views that a revised Daylight Study should be provided to reflect the revised proposal, I concur with the planning authority's opinion that windows below street level in the houses opposite the site should have been examined in terms of VSC. Furthermore, there is no assessment of daylight levels relating to private amenity spaces and communal open space within the proposed scheme. Any subsequent application should include the aforementioned information.

Future Residential Amenity

8.3.18. A 'Unit Calculations' sheet with similar content to a Housing Quality Assessment (HQA) is provided with the application. Having assessed this document against the floor plans submitted with the application it is apparent that Block B contains 13 no. units accessed via a core, above the maximum of 12 units as set out in section 15.9.5 'Lift, Stair Cores and Entrance Lobbies' contained in the City Plan.

8.3.19. The planning authority in its assessment of the proposal as applied for raised concerns relating to the quality and configuration of communal open space as proposed by this planning application. Given the location of communal open space between Blocks A and B, I agree that it is likely to be overshadowed for long periods and no information to the contrary has been provided. As such, this area is of very limited value and I concur with the planning authority that it would give rise to substandard levels of residential amenity to future occupants and would be contrary to section 15.9.8 'Communal Amenity Space' of the Dublin City Development Plan 2022 - 2028.

8.3.20. As detailed in Table 2 above, the revised proposal comprising 21 no. units requires total communal space in the amount of 113 sqm to be provided. This provides for a total of 117 sqm of communal space in the form of roof top terraces on the blocks. I have a concern that overlooking or perceived overlooking impacts would arise from the proposed roof top terraces on nearby residential development at Merville Ave and on the western side of Fairview Avenue Lower. Having regard to the foregoing I consider that refusal reason five as it relates to communal open space remains applicable.

8.3.21. In terms of the revised proposal provided with the appeal and as detailed in Tables 1 and 2 above, concerns remain that the separation distances (approximately 10.3m) between Block A rear windows (serving living areas and bedrooms) and the western facing balconies of Block B are inadequate and would result in overlooking impacts between the blocks leading to a loss of privacy. Similarly, concerns remain in terms of overlooking impacts arising from street-facing Block A upper floor windows onto existing residential properties opposite the site, (specifically Nos. 5, 6, 7 and 8 Fairview Avenue Lower) given the approximate separation distance of c 12.6m. As such, refusal reason five as it relates to inadequate separation distances as outlined above remains generally applicable. However should the Commission decide to include this refusal reason I recommend that reference to SPPR 1 – ‘Separation Distances’ of the *Sustainable Residential Development and Compact Settlement Guidelines* (2024) be omitted on the basis that it relates to opposing windows serving habitable rooms at the rear or side of residential units (including apartments) above ground floor level.

8.3.22. At appeal stage a revised ‘Unit Calculations’ sheet is submitted which indicates how the proposed development has complied with the relevant sequential standards as required by the City Development Plan and the Apartment Guidelines. There are no north-facing units and 72% of the apartments are dual aspect. Based on the information provided I accept that the proposed units would provide an adequate level of internal amenity for future residents.

8.4. Visual Amenity

8.4.1. The third refusal reason considers, *inter alia*, that the proposed development as applied for, by reason of its overall scale, height, bulk and massing would prove visually intrusive and overbearing when viewed from Fairview and from the south along Fairview Avenue Lower. Excessive height, architectural quality, unrelieved balconies and the fenestration pattern of the proposed development are specifically referenced in the context of the proposal adversely impacting on the character of the area and failing to comply with Table 3 of Appendix 3 (Performance criteria in assessing proposals for enhanced height, density and scale) and Policy SC17 Building Height.

8.4.2. The revised proposal provides for a reduction in the height of Block B from six storeys to four storeys along with the introduction of roof-top terraces on both Blocks. The appellant considers that the revised proposal is appropriate in the context of views from Fairview Avenue Lower, with the scheme reading as a contemporary addition to the local streetscape. Amended photomontage images are submitted of the scheme from the wider area and the appellant considers there is no undue visual impact.

8.4.3. The revised photomontages provided in connection with the revised proposal put forward at appeal stage are taken from two vantage in the wider area, and I consider the visual impact to be significantly less intrusive than the initial proposal as applied for, having regard to the reduced height of Block B. However, I have concerns regarding the visual impact of the proposed development when viewed from Fairview Avenue Lower, including from the south and west (opposite the appeal site).

8.4.4. As detailed in Table 2 above, I am not satisfied that the revised proposal would appropriately integrate into the infill site or the streetscape. In my view the scale and massing of the revised proposal remains significant and would be out of character with the immediate area. There is Georgian character along Fairview Avenue Lower and opposite the appeal site in the form of residential properties of three storeys above basement design. Having regard to the position of Block A which remains at the front of the site without set-back, I consider it would remain visually dominant in the streetscape. The proposed pattern of fenestration and unrelieved balconies on the Blocks are at odds with the character of the area. The proposed elevational treatment fails to have regard to the established urban grain and architectural language which

has been established within the immediate context of the site which includes Georgian buildings opposite the appeal site.

8.4.5. Having regard to the foregoing, I consider that the revised proposal by reason of its overall scale, bulk, massing and layout would be visually out of character and overbearing when viewed from the south along Fairview and from opposite the site. Unrelieved balconies and fenestration pattern would adversely impact on the character and visual amenity of the surrounding area.

8.5. Commercial Unit

8.5.1. The fourth refusal reason set out by the planning authority relates to the absence of active uses at street level which is considered to be detrimental to the character and animation of the streetscape, would not be in keeping with the Z4 zoning objective of the site and contrary to Policy CCUV23 *Active Uses*. The limited street and public realm enhancement is also noted.

8.5.2. The appellant refutes the claim that limited street and public realm enhancement along Fairview Avenue Lower, pointing to the proposed development considered to be of high architectural standard replacing a carpark which reads as an eyesore. It is contended that the commercial use would provide animation and its location below street level constitutes an appropriate transition to the more commercial junction to the south of the street with Fairview's main thoroughfare. The applicant states that a larger and more prominent commercial use would not be viable at the subject location and would likely remain vacant.

8.5.3. The land-use zoning applicable to the appeal site is Z4 – Key Urban Villages and Urban Villages with the objective 'To provide for and improve mixed-use services facilities.' As set out in Section 14.7.4 of the Dublin City Development Plan 2022-2028 which relates to the Zone Z4 zoning objective, one of the general principles with regard to development in Key Urban Villages / Urban Villages relating to Commercial / Retail is to '*Promote the creation of a vibrant retail and commercial core with animates streetscapes. A diversity of uses should be promoted to maintain vitality throughout the day and evening.*

8.5.4. The proposed development provides a diversity of uses through residential use and a commercial use, likely to be gym, as indicated by the applicant. The City Development Plan seeks to promote vitality and animated streetscapes to be provided on lands which are zoned Key Urban Villages and Urban Villages. The proposed development which seeks provision of a commercial unit below street level and at basement level would not create animation on the street or contribute to the vibrancy of the area.

8.5.5. While I note the appellant cites viability concerns in respect of a larger and more prominent commercial use, I consider the size of the proposed unit at 72 sqm to be acceptable however it is important that the use be at street level for the aforementioned reasons and as outlined in Section 14.7.4 of the City Development Plan.

8.5.6. Chapter 7 of the City Development Plan relates to the City Centre, Urban Villages and Retail. Key Urban Villages are the top tier of urban centre outside the city centre and are the primary location of commercial activity outside of the city centre. As noted in Chapter 7, the focus is on providing convenient and attractive access to Urban Villages by walking and cycling to local goods and services. Policy CCUV23 *Active Uses* seeks 'To promote active uses at street level in Key Urban Villages and urban villages and neighbourhood centres.' The location of the proposed commercial use below street level would be contrary to this Policy and in this regard I concur with the planning authority.

8.5.7. While I accept the appellant's view that the proposed development would enhance the streetscape compared to the current car parking use on the site, I note the footpath along Fairview Avenue Lower adjoining the subject site is sub-standard in width and given that the proposed development is to be located at the footpath edge, the application makes no provision for its improvement.

8.6. **Other matters**

8.6.1. Development Description

Upon review of the public notices provided in respect of the planning application I find the development description relating to the proposed heights of Blocks A and B to be

unclear and misleading. Block A, which is a part three and four storey over basement mixed-use building, is described in the public notices as *three-storey over basement with set-back third floor level*. Block B, which is a part five and six storey over basement residential building, is described in the public notices as *three storey over basement level with set-back fourth/fifth levels*. I note an observer has also raised this matter. In my opinion a reasonable person would find the aforementioned descriptions of proposed Blocks A and B unclear, with potential for proposed building heights to be misunderstood.

8.6.2. Site Extent and Layout – New Issue

As noted by an observer, the entire site which accommodated the old cinema is not being used for the proposed development. Part of the existing on-site disused commercial building falls within the red line boundary, with the remaining part not within the proposed development site. Based on the site location map provided with the planning application adjoining lands outside the red line boundary are within the applicant's control. It is unclear as to why part of the building on site is not included in the red line boundary; no rationale in that regard is provided. In my view the proposal constitutes ad-hoc, piecemeal development on a restricted site and represents an uncoordinated approach which would not accord with the proper planning and sustainable development of the area. As this is a new issue the Commission may wish to seek the views of the parties. Alternatively, the Commission may decide to not seek further information on this matter, having regard to the other substantive refusal reasons.

8.6.3. Water Services

8.6.4. Appendix A of the submitted Engineering Services Design Report (ESDR) includes the Confirmation of Feasibility from Irish Water (now Uisce Éireann) detailing that water and wastewater connections are feasible without infrastructure upgrades by Irish Water. Submitted layout drawings indicate water infrastructure (surface water sewer, water main and wastewater sewer) within the road running through Fairview Avenue Lower.

8.6.5. Proposed SuDS features are indicated on the storm drainage layout drawing as comprising green / blue infrastructure and roofs, infiltration planters and grasscrete. The ESDR design sheets for the green / blue roofs.

8.6.6. The Drainage Division recommended the additional information be sought due to the lack of adequate information provided, noting it is not possible to state that satisfactory proposals for management of surface water can be provided for the proposed development. The report refers to Development Plan requirements that all new developments with roof areas above 100 sqm to provide for a green blue roof, with attenuation storage at roof level. Reference is also made to Dublin City Council's Green and Blue Roof Guide (2021) summarised in Appendix 11 of the Development Plan. The report finally notes that the proposed green blue roof does not meet minimum requirements for the area covered.

8.6.7. I note that the revised proposal as submitted with the planning appeal does not encompass matters relating to surface water drainage. I consider that the requirements of the City Council's Drainage Division would need to be addressed in full before a recommendation to grant permission for the proposed development could be considered.

8.6.8. Transportation issues

8.6.9. The detailed report on the proposed development prepared by the Transportation Planning Division (TPD) raises several items of concern and for resolution in terms of the transportation aspects of the proposal, and it culminates in a recommendation to seek Further Information (FI). The FI request is summarised in section 3.2.2 of this Inspector's report.

8.6.10. I consider that all requirements as set out in the report of the TPD would need to be fully addressed, including the concerns raised in connection with the potential impact of the existing adjoining informal parking area from which the site is accessed, along with concerns that the right of way adjoining the site to the north becomes the only means of vehicular access to the site.

8.6.11. A number of observations express concerns in terms of the lack of designated parking on-site to facilitate the development. I note that two car rental spaces are proposed at basement level.

8.6.12. Map J of the Dublin City Development Plan 2022-2028 shows that the subject site is within Parking Standard Zone 2 which allows for a maximum of 1 no. car space per unit. The TPD has indicated its openness to considering a low or zero car parking rationale at the proposed development subject to several requirements including the provision of high quality alternative mobility infrastructure. SPPR 3 – ‘Car Parking’ in the *Sustainable Residential Development and Compact Settlement Guidelines* (2024) notes that car-parking provision should be minimised, substantially reduced or wholly eliminated in city centres and urban neighbourhoods of the five cities.

8.6.13. Having regard to the foregoing and subject to the appropriate requirements being met by the proposed development as set out in the TPD report, given the location of the site proximate to high frequency transport services, within 1 km of Clontarf Road railway station and within 100m of the recently opened Clontarf to City Centre Active Travel Scheme (C2CC) comprising improved pedestrian facilities, segregated cycling facilities and bus priority infrastructure extending from the junction of Clontarf Road with Alfie Byrne Road, to Amiens Street at the junction with Talbot Street, there is scope to consider a low car or zero car proposal for the development.

9.0 AA Screening

9.1.1. The subject site is not within or immediately adjacent to any European Sites. The nearest European Site is the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) located c 0.66km to the south-east. The appeal site is located c 330m from the River Tolka at its nearest point.

9.1.2. Noting the nature of the proposed development including the extent of demolition works, the location of the development site relative to the Tolka River and taking a precautionary approach, the planning authority noted it would be possible for suspended sediments, concrete / cements from the proposed development site to cause impacts on the Natura 2000 site. As such, the planning authority identifies a

viable risk of impact and that an Appropriate Assessment Screening Report prepared by a suitably qualified ecologist should be provided. Therefore, the planning authority concluded on the basis of information submitted that it is not possible to determine whether the proposed development, either individually or in combination with other plans or projects would be likely to have a significant effect on South Dublin Bay and River Tolka Estuary SPA.

9.1.3. Given the relative proximity of the proposed development site to the Tolka River which provides a pathway to the South Dublin Bay and River Tolka Estuary SPA, having regard to the precautionary principle, the nature of the proposed development and the limited extent of information on file, including the absence of an Appropriate Assessment Screening Report which should be provided as detailed in Table 15-1 *Thresholds for Planning Applications*, I concur with the planning authority's opinion on this matter and conclude that there is insufficient information on file to determine whether the proposed development, either individually or in combination with other plans or projects would be likely to have a significant effect on South Dublin Bay and River Tolka Estuary SPA.

10.0 Water Framework Directive – Screening

10.1.1. The proposed development comprises demolition of an existing three-storey commercial building and construction of a mixed-use development within two blocks constructed above basement level and all ancillary works on a brownfield urban infill site. The subject site is located c 330m from the River Tolka at its nearest point.

10.1.2. I have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface and groundwater bodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale, and location of the project, due to the absence of information provided with the application, I am not in a position to determine if it poses risk to water bodies, including groundwater bodies, either qualitatively or quantitatively. In this context while I note it is the policy of the City Council that a Basement Impact Assessment (BIA) shall accompany planning applications that include a basement, no such Assessment is

provided in respect of this proposal. As set out in Section 2 of Appendix 9 of the Dublin City Development Plan 2022-2028, several potential impacts may arise from basement development including alteration of groundwater levels or flow.

10.1.3. Having regard to the foregoing, I am not in a position to conclude that the proposed development would not result in a risk of deterioration on any water body, including groundwaters either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives.

11.0 **Recommendation**

11.1. I recommend a refusal of permission.

12.0 **Reasons and Considerations**

1. The net density of both the proposed development of 25 apartments as applied for on the subject site zoned Z4 and the revised proposal of 21 apartments, as included with the appeal, in the Urban Village of Fairview is 299.76 dph (net) and 251.79 dph (net) respectively. Such densities would constitute material contravention of Appendix 3 of the Dublin City Development Plan 2022-2028, and would be contrary to Table 3.1 and Section 3.4 of the Sustainable and Compact Settlements Guidelines for Planning Authorities (2024). As such the proposed development would constitute overdevelopment on a constrained urban site and would be contrary to the proper planning and sustainable development of the area.

2. The proposed development as applied for, by reason of excessive height, scale, massing and density, and in the case of the details submitted in support of the appeal, other than excessive height, would seriously injure the residential amenities of existing properties in the area through overbearance and overlooking impacts, particularly in relation to properties at numbers 36 and 37 Merville Avenue and numbers 5, 6, 7 and 8 Fairview Avenue Lower, and would negatively impact on the visual character of the area. Furthermore, the future residential amenity of occupants would be negatively impacted due to inadequate separation distances between Block A rear windows and the western facing balconies of Block B which would result in overlooking impacts between the blocks leading to a loss of privacy.

3. The proposed development fails to demonstrate compliance with communal amenity space requirements as set out in Section 15.9.8 of the Dublin City Development Plan 2022 – 2028 by reason of poor quality layout which would provide poor levels of amenity for future residents. The revised details submitted in support of the first party appeal which provides for roof top communal open space would give rise to a loss of adjoining residential through overlooking impacts with a consequential loss of privacy.
4. Notwithstanding the provision of a commercial unit below street level, the proposed development fails to comply with Policy CCUV23 Active Uses which seeks to promote active uses at street level in areas including Urban Villages. As such the proposed development would be contrary to the proper planning and sustainable development of the area.

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

John Duffy
Planning Inspector

8th December 2025

Form 1 - EIA Pre-Screening

No EIAR Submitted

Case Reference	ABP-320792-25
Proposed Development Summary	Demolition of existing three-storey commercial building and construction of a mixed-use development comprising 25 residential units and a commercial unit and all ancillary works.
Development Address	45-47 Fairview Avenue Lower, Fairview, Dublin 3.
In all cases check box /or leave blank	
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project.' Proceed to Q2. <input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2,	

<p>Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>Class 10(b)(i): Threshold of 500 dwellings. 25 dwellings are proposed.</p> <p>Class 10(b)(iv): Urban Development - Threshold of 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. Site size is given as 0.0906 ha.</p> <p>Class 14: Works of demolition. Quantum of demolition not given however such works would not be likely to have significant effects on the environment.</p>

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?

<p>Yes <input type="checkbox"/></p>	
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ **Date:** _____

Form 2 - EIA Preliminary Examination

Case Reference	
Proposed Development Summary	Demolition of existing three-storey commercial building and construction of a mixed-use development comprising 25 residential units and a commercial unit and all ancillary works.
Development Address	45-47 Fairview Avenue Lower, Fairview, Dublin 3.
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (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>This is a mixed-use development comprising 25 apartments and one commercial unit across two blocks on a brownfield urban infill site measuring 0.0906ha. The site is presently used to store cars. Adjoining strips of land to the north and south outside the red line boundary are indicated to be rights of way. Part of a 3 storey commercial building is proposed for demolition to facilitate the development.</p> <p>The proposed development would not result in the production of significant waste, or emissions of pollutants. Construction activities will require the use of potentially harmful materials, such as fuels, hydraulic oils and other such substances. Such use will be typical of construction sites. Any impacts would be local and temporary in nature and implementation of a Construction Management Plan will satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p> <p>The proposed development is not an integral part of any larger project and there are no cumulative considerations.</p> <p>The project will cause physical changes to the appearance of the site during the site development works.</p> <p>The project connects to the public water and wastewater systems which have sufficient capacity to cater for demands arising from the project.</p>

<p>Location of development</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>Briefly comment on the location of the development, having regard to the criteria listed</p> <p>The site is zoned Z4 'Key Urban Village /Urban Village' in the Dublin City Development Plan 2022-2028.</p> <p>The existing use on site is for storage of cars.</p> <p>The site is not within or immediately adjacent to any European Sites. The nearest European Site is the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) located c 0.66km to the south-east. The Tolka River flows c 330m from the site.</p> <p>There are no known sites of archaeological significance in the immediate vicinity of the site.</p>
<p>Types and characteristics of potential impacts</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 the characteristics of the development and the sensitivity of its location, consider the potential for SIGNIFICANT effects, not just effects.</p> <p>Some cumulative traffic impacts may arise during construction stage.</p> <p>No transboundary effects arise as a result of the proposed development</p>
Conclusion	
<p>Likelihood of Significant Effects</p>	<p>Conclusion in respect of EIA</p>
<p>There is no real likelihood of significant effects on the environment.</p>	<p>EIA is not required.</p>
<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p>	<p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p> <p>Not applicable.</p>

There is a real likelihood of significant effects on the environment.	EIAR required. Not applicable.
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Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)