



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321535-24

#### Development

Permission is sought for modifications to permitted development (Note: ABP-310947-21/P.A. Ref. No. 2712/21) to increase from 35 to 37 apartment units, minor modifications to front elevation together with all associated works.

#### Location

No. 153-155 Harold's Cross Road, Dublin 6W (formerly known as Michael Grant Motors).

#### Planning Authority

Dublin City Council South.

#### Planning Authority Reg. Ref.

4332/24.

#### Applicant(s)

BHA HX2 Development Ltd.

#### Type of Application

Planning Permission.

#### Planning Authority Decision

Refused.

#### Type of Appeal

First Party.

#### Appellant(s)

BHA HX2 Development Ltd.

#### Observer(s)

1. Pádraig Conaty (Board of Management of Harolds Cross

Educate Together Secondary School).

2. Ruth Glennon (Board of Management of Harolds Cross Educate Together National School).
3. Sean Flangan (Peggy Kelly's Pub & Restaurant).

**Date of Site Inspection**

16<sup>th</sup> day of May, 2025.

**Inspector**

Patricia M. Young.

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## **1.0 Site Location and Description**

- 1.1. This irregular rectangular shaped site has a given 791.9m<sup>2</sup> (0.079ha) area and at the time of site inspection construction works were on-going on the site. These works relate to the permitted 5-storey apartment building by the Board under appeal case ABP 310947-21 (P.A. Ref. No. 2712/21).
- 1.2. I consider that the site setting is largely the same as that described by the Boards Inspector in that previous case with the exception of the demolition of the former building on site associated with the site's previous Michael Grant Motors use and as said the on-going construction works, however the latter is significantly more progressed.
- 1.3. The site has road frontage onto the eastern side of Harold's Cross Road (R137) which at this point contains a bus route that serves Dublin Bus Routes 16, 16D and 49 and the Parkview Avenue Bus Stop (ID: 1293) located c122m to the south. The site forms part of a streetscape scene that is characterised by mainly two and three storey dwellings to the north as well as south. With the western side of Harold's Cross Road at this point addressing Harold's Cross Park.
- 1.4. Immediately to the north of the site is an access that previously served the Harold's Cross Greyhound Stadium but now serves Harolds Cross Educate Together School. To the south of the site is Peggy Kellys Pub & Restaurant whose outdoor amenity space adjoins the site's southern boundary.
- 1.5. The immediate site setting is predominantly residential in its character and the wider surrounding area has a more mixed-use character. The site is located c2.5km to the south of Dublin's city centre.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for modifications to the previously approved Built to Rent apartment development under ABP-310947-21 (P.A. Ref. No. 2712/21) to include the following:
  - 2 No. New apartments consisting of 1 No. 1-bed and 1 No. Studio achieved through a change of use of the ground floor communal facility area of the previously granted

scheme, increasing the total number of apartments from 35 to 37 No. Apartments consisting of: 29 No.1-Bedroom; 3 No. 2-bedroom; and 5 studio units.

- Minor modifications to the front elevation.
- All associated site works.

2.2. According to the accompanying documentation the total floor area remains unchanged (Note: 2,787.9m<sup>2</sup>). A plot ratio of 3.5 and a site coverage of 74.4%.

2.3. This application is accompanied by the following documentation:

- Cover Letter
- Design Statement
- Housing Quality Assessment

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. On the 2<sup>nd</sup> day of December, 2024, the Planning Authority (Dublin City Council) **refused** planning permission for the following stated reasons:

- “1. Having regard to the proposed change the use of the permitted communal amenity facilities of this Build to Rent (BTR) scheme, it has not been demonstrated that the proposed development would provide adequate residential amenity to the future residents as a result of the loss of these facilities and as such, it is considered that the proposal would constitute a substandard form of development which would seriously injure the amenities of the area.*
- 2. The proposed development would also be contrary to Policy QHSN42(a) of the Dublin City Development Plan 2022-2028, which seeks to ensure proposed resident support facilities are appropriate to the intended rental market having regard to the scale and location of the proposal. The development would therefore be contrary to the proper planning and sustainable development of the area”.*

### 3.2. Planning Authority (PA) Reports

3.2.1. **Planning Reports:** The Planning Officer's report (27<sup>th</sup> day of November, 2024) is the basis of the PA decision and it includes the following comments:

- The communal facilities now proposed measures 50.9m<sup>2</sup>.
- The proposed new units meet the required standards set out under the Sustainable Urban Housing Design for New Apartments Guidelines; however, these guidelines require the provision of dedicated amenities and facilities for their residents.
- The range of facilities provided in a Build to Rent Scheme (BTR) include dedicated laundry facilities, communal leisure gym, workspaces/hot desks, concierge service, private dining rooms, kitchen area, tv rooms etc.
- BTR developments differentiates from a traditional housing development model where residential units can be sold or owned individually within a management structure that is typically independent of ownership of the apartments.
- Reference is made to Policy QHSN42(a) of the Development Plan.
- The Board in its determination of parent permission noted that the scheme fell short of the required 174-177m<sup>2</sup> communal open space. The scheme was providing 25m<sup>2</sup> at courtyard level and 94m<sup>2</sup> at roof level. Apartment Guidelines under which the previous scheme was determined have now been superseded but it is noted that the previous scheme under SPPR 8 allowed flexibility in terms of open space subject to the provision of compensatory communal support facilities and amenities being provided with the previous scheme including for a cinema room, a games room, business lounge and concierge.
- It is a concern despite the location the loss now proposed in dedicated amenities and facilities for future occupants.
- This scheme as granted is already deficient in communal external space and the Board took on board the communal facilities provided by the development in deciding to grant permission. The loss of these shared communal amenity facilities would seriously injure the amenities of the future occupants of these apartments in a manner that would be contrary to the Development Plan provisions including Policy QHSN42(a) as well as the would be contrary to the Sustainable Design

Standards for New Apartments, 2023, and the proper planning and sustainable development of the area.

- Concludes with a recommendation for refusal.

### 3.2.2. Other Technical Reports

- **Drainage:** No objection, subject to safeguards.

### 3.3. Prescribed Bodies

3.3.1. None.

### 3.4. Third Party Observations

3.4.1. 3 No. Third Party Observations were received during the Planning Authority's determination of this application. These are attached to file, and I consider that the substantive planning issues they raise correlate with those raised by the Third-Party Observers in their submission to the Board which are summarised under Section 6 of this report below.

## 4.0 Planning History

### 4.1. Site – Recent and Relevant

- **ABP-318621-23 (P.A. Ref. No. 4474/23):**

On the 28<sup>th</sup> day of August, 2024, the Board **refused** permission for a development consisting of modifications to previously approved build to rent apartment development, including addition of 9 no. new apartments by way of an additional floor; additional bicycle parking, with associated site works. The stated reasons and consideration read:

*“Having regard to the proposal for an additional floor and nine additional units on this restricted site, it is considered that the proposal would result in an excessive increase in scale, density, and bulk, which would constitute overdevelopment of the site and would have an overbearing impact on the adjacent properties and detract from the streetscape. The proposed development would seriously injure the visual and residential amenities of property in the vicinity and would have a negative impact on*



*the character and townscape in the area which would be contrary to the provisions of the Dublin City Development Plan 2022-2028 and out of keeping with the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in January, 2024 and would, therefore, be contrary to the proper planning and sustainable development of the area”.*

- **ABP-310947-21(P.A. Ref. No. 2712/21)**

On the 23<sup>rd</sup> day of May, 2022, the Board **granted** permission for a development on this appeal site consisting of the demolition of two storey building and construction of 38 Build to Rent residential apartment development in a five-storey apartment building subject to conditions.

- **ABP-307208-20 (P.A. Ref. No. 2172/20)**

On the 5<sup>th</sup> day of October, 2020, permission was **refused** for demolition of garage and showroom and construction of 6 storey over basement building providing for 43 apartments, 11 car parking and 88 bicycle spaces for two reasons which can be summarised as follows:

1. The proposed development would constitute overdevelopment and would excessively overlook adjoining properties. It was also considered that it would seriously injure the visual amenities of the streetscape; it would have an adverse impact on the character of the area, and it would set an undesirable precedent.
2. Substandard future amenities for occupants in a manner that would be contrary to the Guidelines for Design Standards for New Apartments.

#### 4.2. **Setting**

- **Address: Former Harold’s Cross Greyhound Stadium, Harold’s Cross, Dublin 6 (Note: Adjoining lands to the north and east of this appeal site).**

- **ABP-311174-21 (P.A. Ref. No. 2851/21)**

On the 30<sup>th</sup> day of March, 2022, permission was **granted** for the demolition of buildings and construction of school with associated buildings and facilities subject to conditions.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The Dublin City Development Plan, 2022-2028, is applicable under which the site is zoned 'Sustainable Residential Neighbourhoods – Z1', which has a land use zoning objective *"to protect, provide and improve residential amenities"*. Residential development is a permissible use in 'Z1' zoned lands subject to safeguards. The site also forms part of the zone of archaeological constraint for a Record of Monuments and Places (RMP).
- 5.1.2. I note to the adjoining lands to the north and east of the site are zoned 'Community and Social Infrastructure - Z15'; the lands on the opposite side of Harolds Cross Road are zoned 'Amenity / Open Space Lands / Green Network – Z9' under the Development Plan.
- 5.1.3. Chapter 2 of the Development Plan sets out its Core Strategy. In this regard it indicates that the overarching approach of the plan is to develop a low carbon, sustainable, climate resilient city, with a requirement to provide for approximately 40,000 new housing units between 2022 and 2028.
- 5.1.4. Chapter 5 addresses 'Quality Housing and Sustainable Neighbourhoods' and the strategic approach to the delivery of quality homes and sustainable communities based on the compact 15-minute city concept that envisages people should have the ability to access most of their daily needs within 15 minutes on foot or bike from where they live.
- 5.1.5. Section 5.5.7 of the Development Plan deals with Specific Housing Typologies including Build to Rent. It states that this type of housing typology *"serves an important role in meeting housing demand and can fill a gap in tenure mix in established areas of owner-occupier housing. Recent emerging trends however, would indicate that the dominance of BTR in large schemes can be to the detriment of standard designed apartment units. Whilst such development has its place in the hierarchy of provision of homes across the city, the Planning Authority will seek to avoid over proliferation of such use in certain areas and encourage such development as part of a healthy mix of tenure in order to create sustainable communities and neighbourhoods"*. This section of the Development Plan also sets out that BTR should be concentrated in

significant employment locations. On this point it states: “*within 500m of major public transport interchanges and within identified Strategic Development Regeneration Areas*”. It sets out a requirement for BTR schemes to demonstrate “how the development supports housing need, particularly with regard to tenure, unit size and accessibility with particular reference to the Dublin City Council Housing Need and Demand Assessment and that there is not an over-concentration of Build to Rent Accommodation within an area, including a map showing all such facilities within a 1km radius of a proposal”. This section includes a number of BTR policies. The following policy is of relevant to this proposal:

QHSN42 - Built to Rent Accommodation:

*“To foster community both within a BTR scheme and to encourage its integration into the existing community, the applicant will be requested to provide an evidenced based analysis that the proposed resident support facilities are appropriate to the intended rental market having regard to the scale and location of the proposal. The applicant must also demonstrate how the BTR scheme must contribute to the sustainable development of the broader community and neighbourhood”.*

Chapter 15 - Section 15.10 of the Development Plan deals specifically with the design measures relating to Build-to-Rent developments. It includes:

15.10.1: It indicates that the Sustainable Urban Development Design Standards for New Apartments set out specific planning policy requirements for “Build to Rent” developments and includes the provision of resident support facilities (laundry, concierge, management facilities etc.), resident services and amenities (sports facilities, resident lounge, function rooms, co-working spaces etc.).

It also indicates that whilst the Guidelines do not provide for a quantitative standard residential support facilities and resident services and amenities as “*a general guideline of 3 sq.m. per person is recommended. This will be assessed on a case-by-case basis where the applicant can demonstrate a high standard of services and facilities.*”

It sets out in relation to the provision of storage space, private amenity space and communal space within a scheme will be at the discretion of the planning authority and that there is a general presumption against excessive derogation of the SPPR 8 requirements, in particular, private amenity space. Where derogations of private amenity space are sought, there will be an onus on the applicant to demonstrate that the quality of the unit is of a higher standard, e.g. in excess of the minimum floor area, contains unique design features and that the loss/reduction of private amenity is compensated within the communal amenity provision, e.g. if a unit requires 5 sq. m. of private amenity space, this quantum should be offset to provide for an additional 5 sq. m. communal amenity space.

It states that the City Council will seek: *“to ensure a high level of amenity is provided within BTR schemes. All applications should seek to demonstrate compliance with the relevant standards for storage, private and communal open space as set out in Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments”* and that: *“in all cases, the onus will be on the project proposer to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity”*.

Section 15.10.2: Communal and Public Open Space

*“All Built to Rent developments will be required to provide for the same quantum of external communal open space and public open space as set out for standard apartment developments, see Section 15.6.12 and 15.8.6”*.

5.1.6. Appendix 15 of the Development Plan defines Build to Rent residential accommodation as: *“purpose-built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord”*.

5.1.7. Other relevant sections of the Development Plan include:

- Chapter 3 – Climate Action
- Section 4.5.2 - Approach to the Inner Suburbs and Outer City as Part of the Metropolitan Area
- Section 4.5.3 – Urban Density
- Section 4.5.9 – Urban Design & Architecture
- Section 8.5.1 - Addressing Climate Change through Sustainable Mobility
- Section 15.4 – Key Design Principles
- Section 15.5 – Site Characteristics and Design Parameters
- Section 15.8 - Residential Development
- Section 15.9 – Apartment Standards
- Appendix 16 - Sunlight and Daylight standards

## **5.2. Regional Planning**

- The ‘Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy (RSES), 2019-2031.

## **5.3. National**

- Project Ireland 2040 - National Planning Framework, as revised 2025.
- Sustainable Residential Development and Compact Settlements – Guidelines for Planning Authorities, 2024.
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2023.
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’), 2009.
- Quality Housing for Sustainable Communities’, 2007.
- Housing for All – A New Housing Plan for Ireland, 2021.
- Rebuilding Ireland – Action Plan for Housing and Homelessness, 2016.

- National Sustainable Mobility Policy, 2022.
- Places for People – the National Policy on Architecture, 2022.
- Appropriate Assessment Guidelines for Planning Authorities.
- Development Management Guidelines for Planning Authorities, 2007.
- Climate Action Plan, 2025.

#### **5.4. Natural Heritage Designations**

- 5.4.1. None within the Zone of Influence; however, I note that the site is within c4.4km to the west of Special Area of Conservation: South Dublin Bay SAC (Site Code: 000210) and Special Protection Areas: South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) respectively as the bird would fly.

#### **5.5. EIA Screening**

- 5.5.1. The proposed development has been subject to preliminary examination for environmental impact assessment. In this regard the Board is requested to refer to Form 1 and Form 2 in Appendices of this report below. 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.

#### **5.6. Archaeology**

- 5.6.1. Harolds Cross Park on the opposite side of the road from the appeal site contains the following Recorded Monuments & Places DU018-050001 (Maypole); DU018-050002 (Water mill) and DU018-050004 (Gallows).
- 5.6.2. There are no Protected Structures and/or NIAH listed structures in the immediate site setting.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. The grounds of this First Party Appeal can be summarised under the broad headings as follows:

#### **PA Decision**

- The Board is sought to overturn the PA decision.
- As part of seeking to overcome the PA's decision a revision is proposed in the appeal submission.

#### **Compliance with Planning Provisions**

- This proposal is consistent with local through to national planning provisions.

#### **Future Amenities for Residents**

- This scheme introduces open space through a roof terrace of 87.9m<sup>2</sup> and though this provision falls short of the minimum local and national requirements for communal open space the site is located within proximity to Mount Jerome, Harold's Cross Park, Eamonn Ceannt Park, St. Clare's Park and Kenilworth Square which overcomes its quantitative deficiency.
- The Development Plan provides for a relaxation of communal open space standards for residential schemes including for refurbishment and/or infill sites of up to 0.25ha in size.

#### **Additional Units**

- Dublin City is growing rapidly which gives rise to an increased housing demand.
- One-bedroom apartments and studios are becoming increasingly popular due to their affordability compared to larger homes. This makes them a choice for many individuals from individuals, couples, downsizers through to students.
- Investors recognise the potential of such units for rental purposes due to their consistent demand.

- This proposal would increase the density of this scheme to 467.7 units per hectare with each apartment meeting the requirements of the Sustainable Urban Housing: Design Standards for New Apartments, 2023.
- This setting is well served by a variety of social, community, amenities as well as synergistic services.
- The site is very accessible by public transport.

#### **Other**

- The end user is given as Cooperative Housing Ireland (CHI) who are proposing to purchase all the units within the scheme. They will assume the role of management company responsible for maintaining the communal and amenity spaces.
- A copy of a Social Infrastructure Audit that accompanied appeal case ABP-311691-21 (P.A. Ref. No. 2769/21) is provided.

### **6.2. Planning Authority Response**

6.2.1. None.

### **6.3. Observations**

6.3.1. On the 30<sup>th</sup> day of January, 2025, an observation was received from Ruth Glennon, of the Board of Management of Harolds Cross Educate Together National School, which may be summarised as follows:

#### **Impact on Neighbouring School**

- It is indicated that Harolds Cross Educate Together National and Secondary School occupy a shared campus adjacent to this development.
- The proposed development would give rise to potential security risks and issues of overlooking for students and staff.
- The previously approved windows on the north east elevation particularly at ground floor level are problematic giving rise to significant issues for those using the school entrance. Further windows would comprise safety and privacy.
- No construction management plan is provided.



- 6.3.2. On the 27<sup>th</sup> day of January, 2025, an observation was received from Pádraig Conaty, of the Board of Management of Harolds Cross Educate Together Secondary School, which may be summarised as follows:

**Impact on Neighbouring School**

- Concern is raised that the proposed development would adversely impact the shared campus Harolds Cross Educate Together Secondary School and Harolds Cross Educate Together National School by way of overlooking and it would give rise to additional security issues for their pupils and staff.
- No Construction Management Plan is provided with this application.

- 6.3.3. On the 15<sup>th</sup> day of January, 2025, an observation was received from Sean Flanagan of Peggy Kelly's Pub and Restaurant, which seeks that the Board have regard to the observation submitted to the Planning Authority. Their submission seeks that the decision of the Planning Authority is not overturned and is summarised as follows:

**Planning History**

- This current proposal would increase the number of apartments on this restricted site with little regard for the amenity of future residents to achieve this.
- The facilities that the appellant seek to remove are those facilities that the Board noted in their decision to grant permission for this apartment scheme which is currently being implemented.
- The additional floor level was recently refused by the Board.

**Communal Space**

- The communal open space on site is 116m<sup>2</sup> when the New Apartment Guidelines recommend 177m<sup>2</sup> for 4 no. studio, 28 no. one bed and 3 no. two bed apartment units.

**Open Space in the Vicinity**

- Reference is made to the sites proximity to Mount Jerome, St. Clare's Park and Kenilworth Square as contributing to the amenity for future residents, yet these spaces are privately owned and therefore offer little in the way of amenity for residents of this scheme.
- The only public open space is Harold's Cross Park which is limited in space.

### **Discrepancies between permitted and what is constructed on site.**

- The southern elevation as constructed contains additional windows to that granted permission. Yet the documents contained with this application indicate that there are no changes to this elevation. It is indicated that two additional windows have been provided at ground floor level and an additional window at first and second floor level.
- There are discrepancies between what is permitted and what is now constructed on site. These discrepancies are considered to be considerable given their proximity to their longstanding business.

### **Other**

- This application seeks to maximise yield at the expense of proper planning and sustainable development for a development that already has a significantly high density.

## **7.0 Assessment**

### **7.1. Preliminary Comment**

- 7.1.1. Having carried out an assessment of the site, examined the application details, the planning history of the site and all other documentation on file, including all submissions received in relation to the appeal, together with having regard to all relevant local through to national policy provisions and guidance, I consider that the main issues in this appeal case is the Planning Authority's single given reason for refusal. To this there are a number of other issues that are raised by the Third-Party Observers which I consider warrant comment on in the assessment. I therefore propose to assess these issues under the following broad headings:

- Civil Matters
- First Reason for Refusal
- Second Reason for Refusal
- Amended Scheme
- Amenity Impact – Future Occupants
- Amenity Impact – Properties in the Vicinity

- 7.1.2. The matter of 'Appropriate Assessment' also requires examination. This I propose to examine at the end of my assessment below and I am satisfied that the proposed development sought under this application does not give rise to any other substantive planning matters of concern with sundry matters deal with at the end of the main assessment under the broad heading of 'Other Matters Arising'.
- 7.1.3. To this I note that at the time of inspection works were on-going on the site and there may be deviations between the external envelope as constructed and what has been permitted by the Board under appeal case ABP-310947-21. The Third-Party Observer's in this appeal case raise this concern. However, having examined the documentation on file I note that it does not include changes to the elevational treatment and detailing of this building outside the changes that arise from the provision of the proposed two additional apartment units. This I note also includes the changes to the front elevation of the permitted building with the frontage reflecting the provision of an additional apartment unit at ground floor level with zero setback from Harolds Cross Roads public domain instead of being fronted at the southern side of the eastern elevation by a communal space for resident's use.
- 7.1.4. Accordingly, it is my view that this Third Party concern lies outside of the scope of the Boards remit in its determination of this appeal case. For clarity I note that unauthorised development matters fall under the direct jurisdiction of the Planning Authority to deal with as they see fit.
- 7.1.5. I also note that the appellant has included an amended design option for consideration of the Board should they share similar concerns to the proposed development as the Planning Authority. This consists of a revised ground floor layout to include 1 no. studio apartment and an internal communal area of 61.7m<sup>2</sup> which would accommodate a lounge/games area for residents to share. This amendment would also give rise to an additional 8.3m<sup>2</sup> courtyard at ground floor level and with an 87.9m<sup>2</sup> roof terrace at fourth floor level. This would give rise to one additional BTR unit instead of the two units sought and I note to the Board that this would result in a reduced density of 455.7 units per hectare.
- 7.1.6. In relation to this amended design option I consider that this is not an uncommon practice in the appeal process, particularly in the case of a First Party appeal case. The main aims of the amended proposal are to reduce the loss of communal space

and amenities that would be lost under this proposal whilst balancing their desire to increase the number of units within the envelope of the building permitted by the Board under ABP-310947-21. It also would result in less amendments to the spaces associated with the proposed development at grade. The neighbouring properties are active parties in this case and have had the opportunity to comment on the amended proposals. Accordingly, I am satisfied that adequate opportunity has been afforded for comment on the amended design and I have no objection to its consideration as part of the appeal where relevant in my assessment below.

## **7.2. Civil Matters**

- 7.2.1. This 0.079ha site area has been subject to previous planning applications including of relevance to the proposed development sought under this application which is now subject to a First Party appeal the grant of permission by the Board under ABP-310947-21. Under this appeal case the Board granted permission for the demolition of buildings on this site associated with the site's former use as Michael Grant Motors and the construction of a five storey Build to Rent (BTR) apartment building containing 35 units together with all associated works and services.
- 7.2.2. More recently the Board refused permission under appeal case ABP-318621-23 for an additional floor level of mainly habitable floor area which would have resulted in an increase to the permitted BTR unit number by 9.
- 7.2.3. In my view what is of note in relation to the civil issues raised by Third Parties in this appeal case is that this BTR apartment scheme overlaps with lands outside of the applicant's legal interest and in the legal interest of the Department of Education whose given no consent for any interference with lands in their ownership.
- 7.2.4. This concern was raised previously to the Board in their determination of the parent scheme, with this proposed development essentially seeks modifications to. The Board inspector having inspected the site and having carried out a detailed examination of this matter considered that the area of overlap corresponds with the kerb that runs alongside the site boundary.
- 7.2.5. The Board inspector also noted that the footprint of the proposed building did not extend beyond the footprint of the existing buildings on the site for which demolition was proposed. Through to that the existing gated access to the old greyhound stadium grounds delineated the extent of the lands within the Department's ownership; and

that both access to the development as well as to the bin storage area for this residential scheme are forward of the said line. As such they did not find that the proposed development gave rise to the requirement whereby consent to carry out the proposed development required consent of a Third Party or otherwise.

7.2.6. I am satisfied that this current proposal before the Board does not result in any extension beyond the footprint of the proposed building permitted by the Board under their determination of appeal case ABP-310947-21.

7.2.7. As set out under Section 2 of this report above the proposed development includes minor changes to the front elevation and the provision of two new apartments within the footprint of the permitted building at ground floor level by simply changing the use and associated internal spaces that were permitted as communal facility area. The proposal also shows changes to the perimeter boundaries defining the new private open space which was permitted as a courtyard communal open space accessible from the communal facilities which would be replaced by the provision of the proposed two apartment units. No changes are proposed to the boundaries of the site that form part of the new private open spaces that this proposal would create, including in relation to the adjoining Peggy Kelly's Bar & Restaurant and also the adjoining Department of Education lands which are remote from the works sought under this planning application.

7.2.8. I note also that Section 5.13 of the Development Management Guidelines which provides detailed guidance on the issue of land ownership disputes within planning applications indicates that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts determination. Further, it advises that permission should only be refused based on land ownership, where it is clear that the applicant does not have sufficient legal title.

7.2.9. Having considered the information available to me and having regard to the planning history of the site I consider that there is no evidence that would support that the applicant does not have sufficient legal title to undertake the development sought under this application.

7.2.10. However, should the Board be minded to grant permission it could attach as an advisory note the provisions of Section 34(13) of the Planning & Development Act, 2000, as amended. This indicates that a person is not entitled solely by reason of a

permission to carry out any development. I note however that this was not provided in the Board Order/Direction to grant permission under ABP-310947-21 and as said this proposed development relates to the building envelope it permitted and the provision of modest changes to the separation of at grade open space amenities.

### **7.3. Planning Authority's First Reason for Refusal**

- 7.3.1. The Planning Authority refused permission for the proposed change of use of the permitted communal amenity facilities to two apartment units in the ABP-310947-21 permitted BTR scheme for two given reasons.
- 7.3.2. The first reason given by the Planning Authority considers that the applicant failed to satisfactorily demonstrate that the proposed development would provide adequate residential amenity to the future residents because of the loss of these communal amenity facilities.
- 7.3.3. This reason for refusal also considered that the proposal would constitute a substandard form of development which would seriously injure the amenities and would therefore be contrary to the proper planning and sustainable development of the area.
- 7.3.4. I consider that this given reason for refusal reflects the core planning concerns raised by the Planning Authority's Planning Officer in their assessment of the proposed development sought under this subject planning application. In that the concerns centre on the deficiency in communal space as well as supporting residential facilities, services based on local through to national planning provisions, and in turn the amenity for future occupants of the approved Build to Rent building on a constrained site is questioned.
- 7.3.5. The Appellant in their appeal submission seeks that the Board overturn the Planning Authority's decision to refuse permission for the proposed development which seeks to provide an additional one bedroom and studio apartment to this scheme on part of ground floor area that was permitted under the parent grant of permission ABP-310947-21 as communal facility area.
- 7.3.6. Thus, giving rise to an increase in apartment units from 35 to 37.
- 7.3.7. This proposal also sought what are described as minor modifications to the front elevation of the permitted building together with associated site development works.

The minor modifications to the front elevation relate to the provision of one of the apartment units in the south western corner of the permitted building's ground level envelope and thereby would have frontage onto Harolds Cross Road.

- 7.3.8. For clarity I note that the submitted plans suggest that communal facilities totalling 50.9m<sup>2</sup> in area would remain at basement level.
- 7.3.9. However, I note that this area appears to include an internal foyer serving this space which is subdivided into two areas with one accommodating a cinema space with seating for 7 persons and the other accommodating a table with six chairs.
- 7.3.10. Overall, the Appellant contends that despite this current proposal now before the Board would, if permitted, give rise to a reduction of shared communal / residential support facilities, services, and amenities for future occupants of this permitted BTR scheme. Nonetheless, this building occupies a location that is accessible to public transport as well as is accessible to a variety of synergistic communal, social, outdoor amenity and other land uses. As a result, it is the appellants view that there is ample future communal/residential facilities, services, and amenities within easy reach of this site for future occupants to avail of. Based on this argument they contend that the proposed development would give rise to no negative impact on the future qualitative standards of this BTR building.
- 7.3.11. They also contend that there is a market demand for one bedroom and studio units at this locality and within the wider Dublin city setting.
- 7.3.12. They further indicate that the likely intended end user would prefer that the communal facilities are omitted based on the maintenance of such spaces would increase the costs for future occupants renting within this BTR scheme due to these costs having to be passed on.
- 7.3.13. Moreover, they indicate that the communal facilities are not required by the end user who seek to use this building for social type housing. Whereas the provision of two additional units within this building would be preferable to them.
- 7.3.14. The Third Parties on the other hand seek that the Board uphold the decision of the Planning Authority though raising several additional concerns. The concerns mainly centre on the negative impacts that would arise from any changes to the permitted development. With particular concern that additional window openings would give rise

to increased overlooking through to security issues which are already concerns that arise from the development as permitted under ABP-310947-24.

- 7.3.15. Further concern is raised by Third Parties that the proposed development would, if permitted, give rise to future unsustainable commercially led overdevelopment of this site that would give rise to additional diminishment of amenity for adjoining and neighbouring properties in its vicinity in a manner that would be contrary to the proper planning and sustainable development of the area. Particularly as provided for under the Development Plan.
- 7.3.16. I accept that the general principle of residential development on this site has been established by way of the grant of permission by the Board under ABP-310947-21. This grant of permission permitted a BTR apartment building of five storeys in its maximum height accommodating a total of 35 apartment units with a density of 443.04 units per hectare, a site coverage of 74.4% and a plot ratio of 3.5 on this 0.079ha site.
- 7.3.17. Alongside I note to the Board that residential as a land use is a permissible on 'Z1' zoned lands and is the primary land use function of these lands, subject to safeguards, under the Development Plan.
- 7.3.18. Since the Board permitted this BTR residential building on this site in 2022 (Note: ABP-310947-21(P.A. Ref. No. 2712/21) – See Section 4 of this report above) it is of note that a subsequent application was made for modifications to this building with this comprising of the construction of an additional floor and increasing the total number of BTR apartment units by nine (Note: ABP-318621-23 (P.A. Ref. No. 4474/23)).
- 7.3.19. As set out under Section 4 of this report above the Board refused permission for reasons and considerations that included the proposal would, if permitted, result in an excessive increase in scale, density, and bulk of the permitted building on this site which would constitute overdevelopment. The Board also considered that it would give rise to adverse visual and residential amenity impacts on its setting in a manner that would be contrary to the proper planning and sustainable development of the area as provided for under local through to national planning provisions.
- 7.3.20. Of importance to the consideration of this proposed development local through to national planning policy provisions and guidance have in the intervening time evolved and changed. With this including but not limited to the Dublin City Development Plan,



2022-2028, the Sustainable Urban Housing, Design Standards for New Apartments, 2023, Sustainable Residential Development and Compact Settlements – Guidelines for Planning Authorities, 2024, Climate Action Plan, 2025, through to the recent adoption of revisions to the National Planning Framework, as revised in May 2025.

- 7.3.21. In relation to BTR residential typology I note similar definitions are given in the said Development Plan and the current Apartment Guidelines.
- 7.3.22. On this point I note that Appendix 15 of the Development Plan defines Build to Rent Residential Accommodation as: “purpose-built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord (see also section 5.0 of the DHPLG Section 28 Guidelines, Sustainable Urban Housing: Design Standards for new Apartments (2020))”. I note that the referred to apartment guidelines have been since revised with the current Apartment guidelines defining this land use as: *“purpose-built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord”*.
- 7.3.23. As said the proposed development consists of the provision of two additional BTR apartment units in place of ground floor level communal amenity spaces of a permitted five storey BTR building of 35 BTR apartment units which is currently under construction (Note: ABP-310947-21(P.A. Ref. No. 2712/21)) and would increase its BTR apartment unit total to 37.
- 7.3.24. This would give rise to a total of 5 studio; 29 one bedroom and 3 two bedrooms. Alongside would give rise to an increased density of 467.7 units per hectare, with no change to this building’s 2,787.9m<sup>2</sup> gross floor area, zero car parking provision, bike, or bin storage areas.
- 7.3.25. Thus, the proposal would result in the loss of c144.4m<sup>2</sup> of communal space at ground floor level and its associated c25m<sup>2</sup> communal open space courtyard. The drawings indicate that at basement level a communal facility would be maintained with it having a given floor area of 50.9m<sup>2</sup>. In place of the c144.4m<sup>2</sup> of communal facilities a one-bedroom unit with a given floor area of 70.2m<sup>2</sup> served with a 11.6m<sup>2</sup> private amenity space is proposed (Note: labelled Apt. 37) and a studio apartment with a given area

of 47.88m<sup>2</sup> served with a 12.8m<sup>2</sup> private open space amenity is proposed (Note: labelled Apt. 36).

7.3.26. The proposal now before the Board by way of this First Party appeal would as discussed result in an increase in BTR units to 37 and in terms of communal/residential supports, facilities, and amenities internally as well as externally would consist of an 87.9m<sup>2</sup> roof terrace and the 50.9m<sup>2</sup> communal facilities at basement level. These combined internal and external spaces would total 138.8m<sup>2</sup>. Whereas the combined internal communal/residential support spaces permitted under ABP-310947-21 totalled 194.9m<sup>2</sup> and the external spaces totalled 119m<sup>2</sup>. Thus totalling 313.9m<sup>2</sup> and a reduction of 175.1m<sup>2</sup>.

7.3.27. Having examined the planning history of the parent permission I consider that it is of relevance to this current proposal that the Planning Authority in their determination of what was lodged as a five-storey building with 38 BTR units refused permission on four grounds. One of their given reasons for refusal included their concerns that the scheme provided insufficient level of amenity for future occupants in a manner that would be contrary to then in place Apartment Guidelines. It reads:

*“It is considered that a number of apartments in the development would fail to provide for a sufficient level of amenity for proposed residents as set out in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018 and would therefore be contrary to the stated provisions of Dublin City Development Plan 2016-2022 and proper planning and sustainable development of the area”.*

7.3.28. I note also that both the local and national planning provision documents referred to in this reason for refusal have been since superseded (See: Section 5 of this report above).

7.3.29. The First Party Appellant in appeal case ABP-310947-21 as part of addressing the Planning Authority’s reasons for refusal reduced the number of apartments proposed. In this regard they reduced the number of studio apartments from 6 to 4 and the number of two-bedroom apartments from 29 to 28.

7.3.30. This therefore reduced number of apartment units within this BTR scheme approved by the Board under appeal case ABP-310947-21 to a total of 35 and freed up space within the building’s envelope for the provision of compensatory communal/residential

support facilities, services, and amenities in a matter that was considered to more appropriately accord with the relevant Apartment Guidelines standards and their provision for BTR apartment schemes.

- 7.3.31. Notwithstanding, these changes the communal open space provision of the revised scheme still fell short of the standards set out under these said Guidelines, with I note its Appendix 1 requiring between 174 and 177m<sup>2</sup>, with this based on the nature, scale, and extent of the BTR residential scheme sought.
- 7.3.32. This is also in a context where the Board's Inspector in their assessment of appeal case ABP-310947-21 considered that the communal open space courtyard of 25m<sup>2</sup> located at ground floor level due to its constrained nature and level enclosure was of limited amenity value for future occupants. They also considered the 94m<sup>2</sup> roof terrace space at 4th floor level to be limited though otherwise they considered that it would provide an acceptable level of amenity and privacy for future residents of this BTR scheme when considered alongside the provision of the amended designs provision of more meaningful communal/residential facilities, services and amenities internally for future occupants use, thus improving their future qualitative standards of occupational amenity.
- 7.3.33. On this point I note that the Board inspector in their assessment of appeal case ABP-310947-21 considered that the previous Apartment Guidelines under SSPR 8 provided a level of flexibility that could be applied to the open space provision subject to other compensatory communal support facilities and amenities being provided. Further, they considered that the amended scheme submitted with the First Party Appellants appeal submission which included a cinema room, games room, business lounge and concierge together with the sites proximity opposite to the public amenity space of Harold's Cross Park, on balance, was considered to be acceptable and in accordance with SSPR 8 of then applicable Apartment Guidelines.
- 7.3.34. The Board granted permission for the development as amended by the design option submitted by the First Party appellant in appeal case ABP-310947-21. This is clearly provided for under subject to Condition No. 1 which sets out the scope of the reduced in unit number BTR residential scheme permitted.

- 7.3.35. Against this context I raise it as a concern that this proposal now seeks to remove the compensatory communal facilities and amenities provided internally at ground floor level and the external courtyard at grade.
- 7.3.36. Additionally, it proposes a reduced in area roof terrace at fourth level which is given as having a floor area of 87.9m<sup>2</sup>, with most of this space as illustrated appearing to consists of green space that is of no active or passive amenity value for future occupants.
- 7.3.37. As said the basement communal facilities which spatially include an internal foyer, provides limited in quality and not very flexibly communal facility area for the increased population of occupants sought within the envelope of the permitted BTR building.
- 7.3.38. On this point I note that the current Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2023, under Section 5.9 Build-To-Rent sets out that this residential typology is subject to the design standards applicable to all apartment development which it sets out under Section 3.0. In relation to amenities, it states that: *“dedicated amenities and facilities specifically for residents”* and: *“the provision of such facilities contributes to the creation of a shared environment where individual renters become more integrated and develop a sense of belonging with their neighbours in the scheme. This provides the opportunity for renters to be part of a community and seek to remain a tenant in the longer term, rather than a more transient development characterised by shorter duration tenancies that are less compatible with a long-term investment model”*.
- 7.3.39. Under Section 5.6 of the said Apartment Guidelines, it states that: *“there are a range of potential facilities that may be provided in conjunction with BTR in other jurisdictions such as dedicated laundry facilities, communal leisure areas, gym, workspaces/hot desks, concierge service, etc. Facilities may also include private dining rooms, kitchen areas, office spaces, TV/lounge rooms, etc. that can be booked on occasion by individual residents for their own use”*.
- 7.3.40. As said the scheme now before the Board seeks to exclude the provision of internal communal amenity internal and outdoor facilities/spaces at ground floor level and at grade permitted under ABP-310947-21 with the communal amenity spaces now proposed being of limited value for a scheme which contains 80 bed spaces. Having regard to Appendix 1 of the now in place Apartment Guidelines and having regard to

the break down of apartment units as consisting of 5 No. Studio; 29 No. 1-Bed and 3 No. 2-Bed the communal open space requirement for the proposed amended scheme is 183m<sup>2</sup>. This is a quantitative shortfall of 95.1m<sup>2</sup> in the amended scheme and as said the permitted scheme also had a quantitative shortfall from the required 174-177m<sup>2</sup> national standard required at that time, *albeit* the flexibility provided for under said SPPR 8 of the Apartment Guidelines at that time.

- 7.3.41. It is of note that Section 4.6 Communal of the current Apartment Guidelines on the matter of communal facilities indicate that these should be subject to negotiation and agreement with the developer as part of the planning process. It also indicates that they should not generally be imposed as requirements by the Planning Authority in the absence of proposals from and/or the agreement of an applicant. It further indicates that the provision of such facilities is likely to have significant implications for management and maintenance costs for future residents.
- 7.3.42. On this point I note that the applicant for the permitted BTR apartment scheme is the same as for the previous two applications relating to this site and in the documentation provided with these past and the now current application, they purport to be the landowner of the site area. However, in the accompanying documentation they indicate that they are not the end user and they indicate without any evidence basis that there would be a different end user who would have cost concerns in relation to the provision of the communal facilities which they would have to pass on to future occupants. They also indicate that the indicated end user would prefer the provision of two additional apartment units in their place.
- 7.3.43. The proposed development would result in a significant short fall of communal open space standards within this scheme commensurate to the nature and scale of residential development sought. This is in a context where it is generally accepted by local through to national planning provisions and guidance that BTR schemes are purpose-built residential rental accommodation and associated amenity space that is designed with the sole purpose of being used as long-term rental accommodation and professionally owned and managed by an institutional landlord and not intended for sale.
- 7.3.44. Section 4.10 of the current Apartment Guidelines recognises that the provision of communal amenity space and proper future maintenance of well-designed communal

amenity space for apartment units will contribute to meeting the amenity needs of residents. It also states that: “*accessible, secure and usable outdoor space is a high priority for families with young children and for less mobile older people. The minimum required areas for public communal amenity space are set out in Appendix 1*”. It also provides for a level of flexibility for sites of any size or urban infill schemes of up to 0.25ha. In this regard it states that: “*communal amenity space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality*”.

7.3.45. I also note that the current Apartment Guidelines under Section 5 and/or its appendices do not provide for a quantitative standard residential support facilities, resident services, and amenities, whereas the Development Plan indicates that a general guideline of 3m<sup>2</sup> per person is recommended for BTR schemes.

7.3.46. As such given the total number of bedspaces within the scheme as revised by this application applying this general guideline, that is to say 5 No. studios which are shown to contain 2-bedspaces; the 29 No. 1-bedroom which are shown to contain 2 bedspaces; and the 3 No. 2 bedrooms which are shown to contain 4 bedspaces, this would equate to a general requirement of 240m<sup>2</sup> of residential support facilities, resident services and amenities for this nature and scale of BTR building as amended.

7.3.47. As discussed above the residential support facilities, residential services and amenities would be limited to the basement community facilities of 50.9m<sup>2</sup> for future occupants of the amended scheme as the roof terrace is a communal open space amenity which is a different type of amenity provision for apartment schemes. As such this scheme as amended would provide 0.63m<sup>2</sup> per person whereas the permitted scheme provided c2.43m<sup>2</sup> per person. Thus, giving rise to a significant quantitative reduction in residential support facilities, services, and amenities (Note: c1.80m<sup>2</sup>) and with the additional requirement of the two units having regard to the Development Plan provision being 12m<sup>2</sup> of quantitative standard residential support facilities, resident services, and amenities above that permitted.

7.3.48. To this I note that Section 5.8 of the current Apartment Guidelines indicates that there is no longer a planning rationale to have BTR as a distinct development type for planning purposes. That is to say as a residential typology specifically identified as such as part of the planning process with its own flexible design standards. On this basis I consider that the Guidelines suggest that BTR developments would be

expected to meet the standards set out for general apartment developments, including the communal open space standards, subject to safeguards including the demonstration of qualitative standards are achieved for future occupants.

- 7.3.49. I also note that Section 5.10 of the current Apartment Guidelines set out transitional arrangements which include planning applications, that were subject to consideration within the planning system on or before 21st December 2022, will be considered and decided in accordance with the previous version of the Apartment Guidelines, that included SPPRs 7 and 8.
- 7.3.50. On this point I note that the parent permission for which modifications are now sought was subject to the considerations of SPPR 7 and SPPR 8 where as discussed it was accepted that the compensatory communal facilities, amenities and services which are now proposed to be changed to facilitate the provision of two apartment units compensated for this scheme significant shortfall in communal open space amenity.
- 7.3.51. Against this basis I consider that the proposed development would result in a further reduction in communal open space of  $6.1\text{m}^2$  at roof terrace level with this roof terrace being of poor design in terms of its provision of qualitative active and passive amenity space provision. It also results in the loss of the  $25\text{m}^2$  at grade courtyard communal open space. Thus, giving rise to a loss of  $31.1\text{m}^2$  of communal open space over and above that of the permitted scheme and against the context of also giving rise to a loss of  $144\text{m}^2$  of internal compensatory communal amenity facilities. There is also an increase in units per hectare on this constrained site to 467.7.
- 7.3.52. Despite the lack of definitive clarity on the actual site area given that part of the lands ownership is contested, and while I note that the footprint of the permitted building correlates with the previous built structures on site, the Development Plan sets out that enhanced density should not compromise the provision of high quality private outdoor space. It also sets out that it should provide appropriately scaled communal space through to contribute to healthy placemaking (Note: Objective 1, 3 and 5 of Table 3 of Appendix 3 of the Development Plan).
- 7.3.53. I also refer to Table 3.1 of the Sustainable and Compact Settlements Guidelines which sets a general density for urban neighbourhoods in Dublin of 50 dwelling unit per hectare (dph) to 250 dph (net) shall generally be applied, which this proposal

significantly exceeds. It is also above the net density range in Table 1 of Appendix 3 of the Development Plan.

- 7.3.54. To this I note that Section 1.2 of the said Guidelines notes the importance of the interaction between residential density, housing standards, quality urban design and placemaking to support sustainable and compact growth.
- 7.3.55. Under Section 3.2.1 it further indicates that density when applied alongside other design standards, provides a simple and effective means of reflecting the quantum, scale, and form of development within settlements.
- 7.3.56. Also, of critical relevance in relation to the density of this scheme as sought under this application is the standard of future amenities of its occupants. In this regard I note that the said Guidelines provides under Section 3.3.6 three exceptions to the densities set out in its Chapter 3.
- 7.3.57. In this regard Section 3.3.6 (a) states that: *"[t]here is a presumption in these Guidelines against very high densities that exceed 300 dph (net) on a piecemeal basis. Densities that exceed 300 dph (net) are open for consideration on a plan-led basis only and where the opportunity for densities and building heights that are greater than prevailing densities and building height is identified in a relevant statutory plan"*. This site though having an established planning history for a density that exceeds 300 dph (net) and with its permitted 5-storey height being a default height considered to be acceptable within Dublin city's context, under the applicable Development Plan, subject to safeguards, is not one where the local or otherwise plan-led provisions identifies this site and/or setting as having an opportunity for density greater than its prevailing densities. As such I consider that this exception is not applicable to the increased density sought under this application.
- 7.3.58. In relation to Section 3.3.6 (b) of the said Guidelines I consider that the exception it sets out is not applicable to the enhanced density sought under this application. This is on the basis that the site does not form part of a strategic and sustainable development location site having regards to local planning provisions.
- 7.3.59. In relation to Section 3.3.6 (c) of the said Guidelines it states: *"[i]n the case of very small infill sites that are not of sufficient scale to define their own character and density, the need to respond to the scale and form of surrounding development, to protect the amenities of surrounding properties and to protect biodiversity may take precedence*



*over the densities set out in this Chapter*". This proposal relates to change of use of part of the ground floor area from communal amenity facilities and space to two apartment units with separate private open space provisions together with changes to the front elevation arising from this change of use. As such there is no increase to its floor area, mass, volume through to overall built form proposed nor are the changes that are proposed to its front elevation out of character with the building permitted under ABP-310947-21.

- 7.3.60. The site also occupies a corner location on Harolds Cross Road, *albeit* being adjoined on its northern boundary by a private access road that serves DoE owned land. These adjoining lands accommodate access to the primary and secondary school educational campus that are now present on these lands, with I note the former land use being Harold's Cross Greyhound Stadium.
- 7.3.61. To this I note that Appendix 3 of the Development Plan also sets out a general presumption against schemes in excess of 300 units per hectare and it indicates that research has shown that very high density can challenge positive responses to context, successful placemaking and liveability aspirations, sometimes resulting in poor quality development.
- 7.3.62. It states that: "*schemes in excess of this density will be only be considered in exceptional circumstances where a compelling architectural and urban design rationale has been presented*".
- 7.3.63. As discussed in this assessment there is no exceptional circumstances alongside there is no compelling architectural and/or urban design rationale presented by the applicant either as lodged or as provided with this appeal.
- 7.3.64. In relation to comparable examples within the site setting, I consider that there are none within the immediate visual setting of the site and any buildings of scale that front onto the streetscape scene of Harolds Cross Road are remote from the site. With this including the comparable example given by the appellant in relation to the planning history of No. 348 Harolds Cross Road.
- 7.3.65. In relation to this said site at No. 348 Harolds Cross Road the Appellant references the grant of permission by the Board under appeal case ABP-311691-21 (P.A. Ref. No. 2769/21) for a BTR scheme and a subsequent grant of permission by the Planning Authority under P.A. Ref. No. 3356/24 for alterations and additions to it.

- 7.3.66. I note that P.A. Ref. No. 3356/24 included the addition of two units for the same end user as that indicated for this under construction scheme. This particular site is located over c800m to the south of the site, and I note as permitted and as revised this scheme's density did not exceed 250 units (net) per hectare, which I note accords with Table 3.1 of the Sustainable and Compact Settlements Guidelines which I have referred to above.
- 7.3.67. While I am cognisant that the Sustainable Settlements Guidelines promote increased residential densities and the utilisation of a tiered approach in identifying appropriate densities for settlements, with density ranges for the city centre, urban neighbourhoods and suburbs of Dublin city set out in table 3.1 of the Guidelines. Notwithstanding, there is a general presumption in these Guidelines against net densities exceeding 300 units per hectare and such densities are only open for consideration on a plan-led basis and where the opportunity for densities and building heights greater than prevailing densities as well as building heights are specifically identified in a statutory plan.
- 7.3.68. The density range suitable for a site should therefore be considered and refined according to these Sustainable Settlements Guidelines, with densities at the higher end of the ranges generally accepted to be more suitable for the most central and accessible locations relative to public transport provision. In this context I am not satisfied that the density proposed is one that is consistent with the guidance set out in the Sustainable Settlement Guidelines and is one that can be sustainably absorbed at this locality while also providing qualitative future amenities for occupants when operational.
- 7.3.69. In addition to the above I note that Section 15.10 of the Development Plan refers to the previous Apartment Guidelines SPPR 8. I note that SPPR 8 provided for specific relaxations that can be applied to BTR schemes which differentiated them from standard residential developments, with subsection (ii) of SPPR 8 stating that flexibility can be applied to the provision of storage space, private amenity space and communal space within a scheme at the discretion of the Planning Authority.
- 7.3.70. Section 15.10 of the Development Plan further states that: *"there is a general presumption against excessive derogation of these requirements"* and it gives an example of private open space indicating that where derogations are sought that there

will be an onus on the applicant to demonstrate that the quality of the unit is of a higher standard. Through to that the quantum of private open space should be offset to provide for an additional 5m<sup>2</sup> communal amenity space.

- 7.3.71. In relation to communal open space Section 15.10 of the Development Plan indicates that all apartment applications must demonstrate that compliance with the standards Apartment Guidelines. The Apartment Guidelines referred to in the Development Plan as said have been since superseded and as discussed above the proposed revised scheme not demonstrating compliance Appendix 1 of the current Apartment Guidelines in terms of communal open space standard.
- 7.3.72. Further to this Section 15.10.2 of the Development Plan states that all BTR developments will be required to provide for the same quantum of external communal open space.
- 7.3.73. On this point I note that Section 15.9.8 of the Development Plan similarly sets out that all new apartment developments are required to provide for communal amenity space externally within a scheme for the use by residents only. It states that this is: *“in addition to any private or public open space requirements”* and that it: *“may comprise of courtyard spaces and linear open spaces adjacent to the development”* alongside with the provision to accord with the said previous Apartment Guidelines.
- 7.3.74. Section 15.9.8 of the Development Plan also requires that: *“communal amenity space communal amenity areas should be of high landscape quality and provide for adequate daylight and sunlight access throughout the year”* and that they should be functional and usable to a range of activities including passive recreation and leisurely activities such as games and exercise.
- 7.3.75. Whilst I recognise that the communal open space at roof level would not be overlooked, they would however have the potential for overshadowing given their relationship with the permitted building’s fifth-floor level which adjoins it on its eastern side. Though this relationship would give rise to a level of overshadowing particularly during the morning hours it would notwithstanding receive largely unobstructed southerly and westerly daylight penetration. The main concern with this roof top terrace is that it is quantitatively significantly deficient in its communal open space area. It is also not designed to provide a qualitative level of active or passive recreational amenity, albeit the proposed development would provide some level of

accordance with best practices for surface water drainage treatment/measures by way of the proposed green roof provision indicated.

- 7.3.76. Notwithstanding the main roof structure over the fifth-floor level does not incorporate a green roof over. Nor has the applicant demonstrated its unsuitability to provide additional communal open space amenity for future residents as part of compensating for the loss of the communal facilities spaces that would be lost under this proposal alongside the reduction in communal open space at grade and at fourth floor roof level.
- 7.3.77. I am cognisant that Section 15.9.8 of the Development Plan provides a level of flexibility for sites of up to 0.25 ha, where the communal amenity requirements may be relaxed on a case-by-case basis. With the site having a site area of 0.079ha size and therefore of a size where it would be reasonable and appropriate to consider flexibility. Notwithstanding, given the significant shortfall of communal open space provision having regard to the required standards for the potential future population of this building and the lack of any compensatory measures to overcome the loss of communal open space provision and loss of residential/communal support services, facilities and amenities, I am of the view that the two additional units would result in overdevelopment of this constrained site and would give rise to a substandard level of future amenity for occupants of this building as a whole when compared to the scheme as granted under ABP-310947-21.
- 7.3.78. It would also be a type of residential building that would further be removed what is generally considered to be a BTR residential building to be. Additionally, this site's proximity to Harolds Park opposite in my view is not sufficient to overcome that the revised scheme provides c48.03% of the required communal open space amenity for its future residents. With this being quantum of provision contrary to both local and national standards for communal open space amenity. It is also not compensated by the quantum of open spaces specified by the Appellant as part of their reasons for this low standard of communal open space provision. In this regard I concur with the Third-Party Observer it is not reasonable to argue that existing private amenity open spaces Mount Jerome, St. Clare's Park and Kenilworth Square are amenity provisions within the site setting that compensate for the substandard provision of communal open space within this scheme as now sought.

- 7.3.79. It is also of further note that Section 15.9.8 of the Development Plan in relation to roof terraces indicates that these will not be permitted as the primary form of communal amenity space for a residential scheme but may contribute to a combination of courtyard and or linear green space.
- 7.3.80. It is therefore an additional concern that the sole provision of communal open space under this proposal is its roof terrace.
- 7.3.81. Also, it is not demonstrated in this application how this roof terrace would be in its reduced size suitable for the intended use in terms of wind comfort levels, daylight and sunlight, noise impacts and safe and secure accessibility for all users. This is a requirement of the Development Plan under Section 15.9.8. I consider that it would not be unreasonable to provide further assurance of this as part of this proposal which proposes the loss of communal open space at grade and at fourth floor level.
- 7.3.82. Of further concern there is a lack of clarity on what built features and natural feature would be provided within a detailed landscaping/surfacing scheme for this roof terrace communal open space. Nor is there any clarity on how it would be maintained and managed given that the First Party has identified a separate Third-Party end user for this BTR building.
- 7.3.83. In relation to the Social and Cultural Infrastructure Audit provided with the appeal submission this I note relates BTR apartment scheme at 348 Harolds Cross Road which is located over c800m to the south of the site. This audit was prepared to support a subsequent application made to revise the proposed scheme as permitted under ABP-311691-21 (P.A. Ref. No. 2769/21) where two additional units were proposed increasing the BTR unit number to 52. I do not consider that this case establishes a comparable precedent to the amendments sought under this current application now before the Board based on a number of factors including but not limited to:
- The proposal as revised provides for a total of 302m<sup>2</sup> of communal open space, including at grade and at upper floor levels including a roof terrace and the revised provision exceed the 270m<sup>2</sup> requirement of the Appendix 1 of the current Apartment Guidelines.
  - The reduction in supporting residential amenities within this scheme are not as quantitative or as qualitative in comparison to the proposed development before the

Board. In this regard this proposal would in addition to exceeding the communal open space provision which includes an area of communal open space at grade would still include 142m<sup>2</sup> (Note: a reduction of 58m<sup>2</sup> and with this equating to the provision of c1.3m<sup>2</sup> of such amenity per resident of this scheme whereas the permitted scheme provided for 1.96m<sup>2</sup>). This scheme before the Board proposes a more significant quantitative and qualitative reduction in supporting residential amenities, services, and facilities for its end user.

- This scheme at a plot ratio of 2.31 and a site coverage of 59%. It therefore relates to a less dense and compact development when compared to the site.
- The documents note the same end user for both schemes which appear to suggest that they were satisfied with the provision of communal amenity space arising in the revised scheme raising no management, maintenance, or other concerns.

7.3.84. Though I accept a number of the Social and Cultural Infrastructure Audit conclusions in terms of the geographical area of Harold's Cross, including that it includes a wide variety of existing social infrastructure from educational, childcare, community and cultural, healthcare, religious, retail, sport, recreational, through to accessibility to public transport. Notwithstanding, I consider that the proposed BTR schemes relate to different site contexts and constraints. I therefore consider the information contained in it together with it being carried out a number of years ago is of limited relevance in the consideration of the proposed development now sought.

7.3.85. My final comment relates to the fact that the permitted five-storey building is not at odds with the 6-storey default height for Dublin as provided for under its Height Strategy set out under Appendix 3 of the Development Plan. Given that the site setting is one that is characterised by two and three storey heights and that no additional height is proposed I nonetheless raise a concern that Development Plan's Height Strategy sets out that any development with a plot ratio over 3.0 must be accompanied by a compelling case.

7.3.86. In this case the proposed development is one that results in a plot ratio of 3.5 and it would be unreasonable in my view to require an applicant to provide and demonstrate a compelling case for this plot ratio given that this application relates to changes to a permitted building which do not give rise to any change in its floor area, footprint and overall built form. As such there is no change between the permitted development's

plot ratio as granted under ABP-310947-21 and the current proposed development before the Board.

- 7.3.87. Conclusion: Having regard to the above considerations I share and concur with the Planning Authority's first given reason for refusal which considers that the proposed development would give rise to substandard residential amenities for future occupants that would be contrary to local through to national planning provisions and in turn would not accord with the proper planning and sustainable development of the area. I also consider that the density of the proposed development would be contrary to density provisions supported in policy and objective 3.1 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage, 2024, and which are summarised under its Table 3.1.

#### **7.4. Second Reason for Refusal**

- 7.4.1. The Planning Authority's second reason for refusal builds on the concerns that gave rise to its first given reason for refusal. It considers that the proposed development would also be contrary to Policy QHSN42(a) of the Development Plan which seeks to ensure support facilities that are appropriate to the intended rental market having regard to the scale and location of the proposal. This reason for refusal concludes that the proposed development would be contrary to the proper planning and sustainable development of the area.
- 7.4.2. I note that this policy as set out in the Development Plan is not broken into a sub policy (a) and reference to the same appears to have been made in error. This policy states that the City Council will seek: *"to foster community both within a BTR scheme and to encourage its integration into the existing community, the applicant will be requested to provide an evidenced based analysis that the proposed resident support facilities are appropriate to the intended rental market having regard to the scale and location of the proposal. The applicant must also demonstrate how the BTR scheme must contribute to the sustainable development of the broader community and neighbourhood"*.
- 7.4.3. The Appellants argument in support of the proposed development is on the basis that there is a need for a wide variety of residential typologies and mixes to cater for the significant demand for rental properties within Dublin city and they provide as said a

Social and Cultural Infrastructural Audit that was provided in support of the provision of two additional units to a permitted BTR residential scheme c800m away from the site.

- 7.4.4. Of further concern they provide no evidenced based analysis that the significant reduction in the proposed resident support facilities in this permitted scheme is appropriate to the intended rental market having regard to the scale and location specifics of this proposal.
- 7.4.5. In my view the reduction in residential support facilities would not foster or enhance a sense of community within this BTR scheme and whilst likely to give rise to higher reliance facilities, services as well as amenities remote from this building.
- 7.4.6. This reliance and fragmentation of movements particularly for residential supports could alongside other similar developments place undue demand on existing supply, particularly that which is publicly provided within this locality, including in the context of this site the limited public open space provision of Harolds Cross Park opposite. I also note that there is a lack of pedestrian footpath on the opposite side of Harolds Cross Road.
- 7.4.7. It is of further note in my view that the Development Plan discourages BTR schemes with less than 100 units. It indicates that schemes below this number of units will only be considered where it can be demonstrated that there is a strong need for the development and a detailed justification is provided.
- 7.4.8. Moreover, Section 5.5.7 indicating that the Housing Need and Demand Audit (HNDA) analysis of the city indicates that there is not a specific demand for shared accommodation in Dublin City.
- 7.4.9. It is further a concern that this residential building is still described as a BTR building when it is generally taken that this is a form of purpose-built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord (Note: Section 5.2 of the current Apartment Guidelines). Yet the communal open space through to the residential support services, facilities and amenities are significantly more substandard and limited in their provision relative to the apartment mix sought when compared to the permitted scheme. With no evidence to provided by the applicant



with this application or on appeal that this result would be appropriate to its intended rental market and potential end user.

- 7.4.10. Additionally, Section 5.5 of the current Apartment Guidelines sets out that the provision of dedicated amenities and facilities specifically for residents is usually a characteristic element of BTR residential schemes. It further states that: *“the provision of such facilities contributes to the creation of a shared environment where individual renters become more integrated and develop a sense of belonging with their neighbours in the scheme. This provides the opportunity for renters to be part of a community and seek to remain a tenant in the longer term, rather than a more transient development characterised by shorter duration tenancies that are less compatible with a long term investment model”*.
- 7.4.11. Moreover, Section 5.6 of the current Apartment Guidelines states that: *“there are a range of potential facilities that may be provided in conjunction with BTR in other jurisdictions such as dedicated laundry facilities, communal leisure areas, gym, workspaces/hot desks, concierge service, etc.”*
- 7.4.12. On this point I raise a concern which the Board may consider is a ‘new issue’ that the proposed development is one that, if permitted, would materially change the permitted functional use, character, and intention of this residential apartment building. The latter is not provided for under the description of the proposed development. With the public notices and the accompanying documentation setting out that the change of use proposed under this application relates to the ground floor communal facility area of the previous permitted scheme to accommodate the provision of two additional BTR units and there is no other material change of use proposed. Despite this concern it is a requirement for all residential developments to comply with relevant local and national standards as discussed in the assessment above.
- 7.4.13. Conclusion: Having regards to the above considerations I generally concur with the Planning Authority’s second reason for refusal that the proposed development would be contrary to Policy QHSN42 of the Development Plan and in turn would be contrary to the proper planning and sustainable development of the area. The Board may also consider that the nature of the proposed development would materially change the overall functional use of this residential building as permitted under ABP-310947-21.

## 7.5. Amended Scheme

- 7.5.1. As previously described in the assessment above the Appellant includes with their appeal submission an amended designed option. In relation to these changes I accept that these proposed revisions would give rise to firstly the communal facility space being maintained where it could enhance the vibrancy and vitality of the streetscape scene given that it would immediately address the public domain of Harold's Cross Road. With this enhanced by the nature of the communal use behind it and the large clear glazed areas immediately adjoining the public domain.
- 7.5.2. This use I consider is less sensitive to such a juxtaposition with the public domain in comparison to the provision of an apartment unit at this location. Further such a use is less likely to be adversely impacted by the adjoining Peggy Kelly's Bar & Restaurant that would adjoin it than the apartment unit proposed in the south western ground floor level of the permitted building envelope. This is similarly the case for the modest communal open space provision that is also proposed in comparison to the private amenity space of an apartment unit and the reliance on the limited openings for daylight and natural ventilation, with such an amenity likely to be more impacted from other nuisances arising from the operations of the outdoor dining, seating through to food preparation alongside it.
- 7.5.3. I also accept that the private open space as amended serving the proposed studio unit to be maintained is quantitative and qualitatively improved in comparison to that proposed under this application. Notwithstanding this positive, I consider that the amended design does not overcome the concerns that this unit is dual aspect with one opening upon which it is dependent for all daylight, sunlight, and natural ventilation into the interior of its space.
- 7.5.4. Of further concern is the constrained nature of the communal open space proposed which would also be heavily overshadowed by privacy screening and boundary treatments, with its use having the potential to give rise to nuisances for the adjoining and neighbouring private open spaces.
- 7.5.5. The proposed communal facilities whose indicated area appears to include the lobby and accessible toilet would be in addition to the basement communal facilities and therefore giving rise to an increase in such facilities to 112.6m<sup>2</sup>, which based on the loss of two bedspaces would result in the provision of an increased provision per resident of c1.44m<sup>2</sup>.

- 7.5.6. The courtyard open space is of limited if any real value given its 8.3m<sup>2</sup> size and the level of enclosure of this space. However, it would give rise to the provision of communal open space at grade that together with that provided at rooftop level a total of 96.2m<sup>2</sup> of communal open space amenity for future residents. Having regard to the reduction in the number of one bedroom apartment this would also result in a reduction in the required communal open space provision to 178m<sup>2</sup>.
- 7.5.7. Despite these improvements I am not satisfied that the appellants amended design option overcomes the concerns raised by the Planning Authority in their two given reasons for refusal or the discussion of both of these reasons in the two previous sections against the relevant local through to national planning provisions and considerations alongside the planning history of this constrained site, in particular the development as granted on appeal to the Board which this proposal seeks to amend. Alongside, against a context where there is still a significant shortfall of quantitative as well as qualitative communal open space for future occupants in accordance with relevant standards. It would also not result in any significant reduction in density for what is already a high density scheme that significantly exceeds 300 dph.
- 7.5.8. I therefore consider that the appellant in the amended scheme proposed does not demonstrate its consistency with relevant local and national standards for the nature of the development sought and that as it still would give rise to substandard amenity for future occupants over and above that of the permitted scheme that it would be inconsistent with the proper planning and sustainable development of the area to provide further flexibility for what is already a significantly high density scheme on a constrained site where the land use zoning objective for 'Z1' lands seeks to achieve a reasonable balance between proposed developments through to improvements to residential development.
- 7.5.9. Conclusion: The amendments to the proposed development as set out in the Appellants appeal submission still give rise to a substandard future amenity for occupants of this scheme in a manner that does not accord with the proper planning and sustainable development of 'Z1' zoned lands.

**7.6. Amenity Issue – Residential Amenity of Future Occupants Other**

- 7.6.1. The residential amenity for future occupants as discussed below is based on the scheme as lodged and not on the scheme as set out in the revised design option submitted to the Board on appeal.
- 7.6.2. In relation to the proposed two apartment units, as noted above I raise a concern that the proposed additional one-bedroom unit (Note: Apt. 36) which would be located in the south western corner of the ground floor level of the building permitted under ABP-310947-21 would have a substandard level of internal amenity. This concern is based on the limitations of its design in providing for maximum daylight penetration, qualitative levels of natural ventilation through to adequate privacy for its future occupants.
- 7.6.3. In relation to these concerns the western elevation of this proposed unit from access through to most of its daylight, sunlight and natural ventilation would be provided from its western elevation which has no setback and/or defensible space between it and the public domain of Harolds Cross Road.
- 7.6.4. This road is a busy regional road containing a bus lane on its eastern side.
- 7.6.5. Additionally, to the south this unit adjoins an outdoor amenity space associated with the operational function of the adjoining 'Peggy Kelly's bar and restaurant which its proposed private open space amenity of 11.6m<sup>2</sup> would adjoin at a point where it contains several structures and spaces associated with outdoor dining, seating through to food/beverage preparation.
- 7.6.6. This arrangement together with any permanent southern boundary treatment that is of sufficient height to provide privacy together with the proximity of the privacy screening to the east and the built form of the building at this point is likely to result in a space that is heavily overshadowed. Alongside, a situation where it would be reasonable to provide some acoustic measures/buffering to abate noise nuisance arising to this space given that it would be more sensitive to adverse noise and other nuisance impacts than the permitted communal courtyard space.
- 7.6.7. In relation to the internal dimensions and private amenity open space provisions, outside of the concerns raised above, I consider that this unit is generally consistent with local through to national planning provisions standards, with of note the floor-to-ceiling height being generous in its 3.45m height which is consistent with the floor-to-ceiling height throughout the ground floor level of the permitted building.

- 7.6.8. Further, as noted above the use of the permitted communal use of the space that the proposed development seeks to now provide a one-bedroom unit would despite the level of void treatment not provide the same level of street activation given that future occupants would be likely to use measures that would prevent undue observation into their living space.
- 7.6.9. I also consider that the revised front elevation as part of this proposal contains significant glazed voids that immediately address the public domain of Harolds Cross Road.
- 7.6.10. It includes no robust or meaningful designed measures to safeguard privacy of its future occupants and opts to maintain the overall light weight aesthetic of the glazing treatment on the southernmost side of the ground floor level. While I consider that the permitted front ground level treatment added visual lightness and as said given the potential for it to provide street animation, vibrancy, and vitality by way of its use as a communal amenity by future occupants.
- 7.6.11. These outcomes in my view are positive, however, the design under this scheme should provide meaningful qualitative daylight, sunlight, ventilation, and privacy to any new units including Apt 36. This is not demonstrated in this proposed development, nor is it concern that in my view could be appropriately addressed by way of condition.
- 7.6.12. In relation to the Apt. 37, this consists of a studio apartment unit of 47.88m<sup>2</sup> that has a single southerly aspect and opening onto a private open space amenity of 12.8m<sup>2</sup>. Its internal dimensions and private amenity open space are both above the spatial standards set out in the said Apartment Guidelines and those set out in the Development Plan.
- 7.6.13. Of concern, however, is the fact that this internal space would be served by one glazed opening on its one external wall. Though this would have a southerly aspect, with this opening being of a size that it also is designed to accommodate access onto the proposed private open space serving this unit. Notwithstanding, it would provide limited daylight/sunlight penetration as well as limited natural ventilation. This is further added to by the overshadowing that would arise from the privacy screening boundaries around the private open space amenity provision proposed.
- 7.6.14. I note that the external elevation of this unit at its closest point having a setback of c3.8m from this site's southern boundaries. I additionally note its relationship with the

privacy screening separating the private amenity spaces to the east as well as west of it. Alongside its relationship with the permitted buildings overall form which includes to the west of it the building projects further in a southerly direction and is four storeys at this point.

- 7.6.15. These factors in my view would result in the opening serving this unit being overshadowed for significant portions of the day and to varying degrees through the four seasons of the year. Similarly, these factors would also result in its private open space being one that is also likely to be heavily overshadowed. There is a lack of clarity provided on this matter with this application and with the documents accompanying this First Party appeal.
- 7.6.16. I also consider that this private amenity space would require a level of acoustic buffering of noise given its relationship with the arrangement and function of structures as well as spaces in the adjoining Peggy Kelly's pub and restaurant to the south.
- 7.6.17. Of further concern is that the proposed development sought under this application would as said give rise to a loss of communal/residential support facilities, services, and amenities for future occupants of this residential scheme.
- 7.6.18. In addition to the concerns already raised on this point the communal amenity spaces that would be provided at basement level as said give rise to qualitative and quantitative concerns. This is added to by the 2.5m floor to ceiling height of the meeting room to be maintained at basement level and with the basement level TV room also having the same measured floor to ceiling height and not the given 3.2m measurement as indicated in Drawing No. 3.1.540. This is floor to ceiling height is marginally above the minimum 2.4m floor to ceiling heights set out in the current Apartment Guidelines and Building Regulations Technical Document F. Both proposed communal amenity rooms would be solely dependent upon artificial lighting and ventilation for its users. Given the use of these rooms as communal amenity space I question that in this case that the 2.5m floor to ceiling height is consistent with achieving qualitative floor space for communal amenity use for future occupants of this permitted scheme.
- 7.6.19. Conclusion: Having regards to the above I am not satisfied that the proposed two apartment units provide a qualitative future amenity for occupants based on daylight/sunlight penetration, overshadowing and privacy.

## **7.7. Amenity Impact – Properties in the Vicinity**

- 7.7.1. I consider that the modest nature of this proposed development would not result in any substantive additional nuisances during construction through to operation. This is on the basis that I consider that the proposed development relates to the change of use of internal floor area of a permitted building with no additional floor area proposed and minor modifications to its envelope as well as its exterior spaces.
- 7.7.2. Additionally, the proposed development seeks to provide a change of use from communal amenity space to residential, in the form of two units, with the general principle of compact and consolidated residential development deemed to be generally acceptable subject to safeguards.
- 7.7.3. Moreover, the external changes as indicated in the submitted drawings show that they relate to the ground floor south western corner of the permitted building, and they would not give rise to any material or significant overlooking or any impact on any property in their vicinity.
- 7.7.4. Furthermore, the nuisances that would arise during the construction and operational phase of the permitted building taking account of the modest nature, scale and extent of development sought under this application would not give rise to any additional exceptional nuisances or disamenity for properties in its vicinity.
- 7.7.5. To this I also note that the parent grant of permission under ABP-310947-21 includes a number of conditions that are imposed to ensure that no undue nuisances arise. The conditions include limiting construction hours (Condition No. 14), the agreement of a Construction Management Plan (Condition No. 13) which I note requires and is not limited to providing noise management measures alongside is a concern that is raised by Third Party Observers in relation to the proposed development now sought. The Board could as a precaution as part of a grant of permission request a revised Construction Management Plan by way of an appropriately worded condition. There are other conditions included in this parent grant of permission including agreement of Waste and Demolition Plan (Condition No. 12) through to restrictions on hours and days when construction activities can take place.
- 7.7.6. I also note that the bicycle parking provision meets the required standards and that the parent building was permitted as a zero-car parking building on foot of a Traffic and Transportation Statement. On this point I note that the Planning Authority raised

no significant issue that the proposed development would place any significant additional burden on the limited publicly provided on-street car parking provision at this location.

- 7.7.7. Additionally local through to national planning provisions provide for this flexibility including zero car parking at accessible locations like this.
- 7.7.8. This is one of the measures towards achieving more sustainable climate resilient developments whereby future occupants live within 15-minute city neighbourhood context. I am therefore satisfied that the proposed development would not give rise to any significant traffic hazards, road safety or other related issues when considered against the permitted scheme and on its setting.
- 7.7.9. My final comment relates to the lack of any evidence to support that the proposed development sought under this application would give rise to any depreciation of property value in its vicinity.
- 7.7.10. Conclusion: In conclusion, I am satisfied that the proposed development would not give rise to any serious amenity issues for properties in its vicinity.

## **8.0 AA Screening**

- 8.1. I have considered the proposed development in light of the requirements of Section 177U of the Planning and Development Act 2000 (as amended). As set out under Section 5.4 of this report above the subject site is not located within or adjacent to any Natura 2000 site and is not considered to be within the zone of influence of any Natura 2000 sites. The closest Natura 2000 sites are the Special Area of Conservation: South Dublin Bay SAC (Site Code: 000210) and Special Protection Areas: South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which are located c4.4km to the east, respectively, as the bird would fly.
- 8.2. The proposed development will consist of mainly internal amendments to a permitted apartment building with the only exterior works relating to the modifications to its envelope and the provision of a modest additional privacy screening for the separation of the at grade courtyard area to provide two separate private open space amenities for the proposed two apartment units. As said the proposed development relates to a permitted building that is under construction and located within the long established



and predominantly built-up serviced neighbourhood of Dublin city located within 2.5km to the south of its historic centre.

8.3. Having considered the nature, scale, and location of the proposed development, I am satisfied that it can be eliminated from further assessment. This is on the basis that it would not give rise to any appreciable effect on any Natura 2000 site or sites. The reason for reaching this conclusion is based on the following factors:

- The modest nature, scale, and extent of the proposed development.
- The location of the proposed development on serviced lands that prior to the on-going implementation of the grant of permission ABP-310947-21 (P.A. Ref. No. 2712/21) had a brownfield infill character and are zoned 'Z1' under the Dublin City Development Plan, 2022-2028, for which residential development is deemed to be permissible as the primary land use subject to safeguards.
- The lateral separation distance from the nearest Natura 2000 sites and the urban nature, function, and physical character of intervening urbanscape with the site having no connection to the habitats and biodiversity that are present in between.
- The absence of any ecological pathways to any Natura 2000 site(s).

8.4. In conclusion, I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a Natura 2000 site or sites and I therefore consider that appropriate assessment is not required in this case.

## 9.0 Recommendation

9.1. I recommend that permission is **refused**.

## 10.0 Reasons and Considerations

1. The proposed development would constitute an excessive residential density for this constrained site (467.7 units per hectare), which not be in accordance with the density provision supported in policy and objective 3.1 of the Sustainable

Residential Development and Compact Settlement Guidelines for Planning Authorities, as issued by the Department of Housing, Local Government and Heritage, in 2024, and would constitute overdevelopment.

It is also considered that the proposed development would give rise to a quantum of residential development that would be deficient in quantitative and qualitative communal open space amenity with the level of provision falling significantly short of the standards set out under Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2023, and in turn would be contrary to Section 15.10.2 of the Dublin City Development Plan, 2022-2028.

Additionally, it is considered that the proposed development would give rise to further substandard diminishment for future occupants of this scheme given the significant quantitative and qualitative loss of compensatory communal amenity and residential supports provided in the scheme permitted under ABP-310947-21 with the limited amenities and facilities remaining being contrary to Policy QHSN42 of the said Development Plan 2022-2028, which seeks to ensure proposed resident support facilities are appropriate to the intended rental market having regard to the scale and location of the proposal on evidence based analysis. The proposed development would, therefore by itself and by the precedent it would set for other development, result in an inappropriate quantum of residential development on this site.

For these reasons, the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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

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Patricia-Marie Young  
Planning Inspector - 21<sup>st</sup> day of May, 2025.

## Form 1 - EIA Pre-Screening

<b>Case Reference</b>	<b>ABP-321535-24</b>
<b>Proposed Development Summary</b>	Permission is sought for modifications to permitted development (Note: ABP-310947-21/P.A. Ref. No. 2712/21) to increase from 35 to 37 apartment units, minor modifications to front elevation together with all associated works.
<b>Development Address</b>	<b>No. 153-155 Harold's Cross Road, Dublin 6W (formerly known as Michael Grant Motors).</b>
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>	<input checked="" type="checkbox"/> Yes, it is a 'Project.' Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	State the Class here.
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>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?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.  <b>No Screening required.</b>	

<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.  <b>EIA is Mandatory. No Screening Required</b>	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b>  <b>OR</b>  <b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	<i>Class 10(b)(i) of Part 2: Threshold 500 dwelling units. Class 10(b)(iv) of Part 2: Threshold Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)</i>

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

Inspector: \_\_\_\_\_ Date: 21<sup>st</sup> day of May, 2025.

## Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	<b>ABP-321535-24</b>
<b>Proposed Development Summary</b>	<b>Permission is sought for modifications to permitted development (Note: ABP-310947-21/P.A. Ref. No. 2712/21) to increase from 35 to 37 apartment units, minor modifications to front elevation together with all associated works.</b>
<b>Development Address</b>	<b>No. 153-155 Harold's Cross Road, Dublin 6W (formerly known as Michael Grant Motors).</b>
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>  (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).	<b>Briefly comment on the key characteristics of the development, having regard to the criteria listed.</b>  The development will consist of the change of use of part of the ground floor level of a permitted part four and part five storey Build to Rent apartment scheme together with modest modifications to its external elevations and revision of internal privacy screening to provide enclosure of two additional private open spaces to serve the proposed two additional apartments on a site area of 0.079ha in a built up urban site where the permitted building is in the process of construction (Note:ABP-310947-21(P.A. Ref. No. 2712/21).  No additional floor area is proposed or changes to the permitted buildings footprint.  The proposed development is modest relative to the nature, scale, and extent of the permitted building on site relating to a change of use of internal floor area permitted and already constructed.  The building is not exceptional in the context of its urban neighbourhood and the nature, scale and extent of residential developments that has been permitted on brownfield infill serviced zoned accessible sites.  The additional waste the proposed development would generate waste during construction and operation phase, I do not consider would be of a level that would be exceptional or significant in the local, regional or national context and the implementation of the proposed development would not require the use of substantial resources with the main works as said relating to a permitted building.  I am satisfied that the development, does not pose a risk of major accident and/or disaster, and due to its location would not be vulnerable to climate change.

	It would not present a risk to human health.
<p><b>Location of development</b></p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural, or archaeological significance).</p>	<p><b>Briefly comment on the location of the development, having regard to the criteria listed.</b></p> <p>The site is not designated for the protection of the environment or are any of lands within its vicinity.</p> <p>The surrounding urbanscape, including Harolds Cross Park opposite, in terms of landscape, natural heritage through to built heritage is not subject to any specific protection and/or designation.</p> <p>The site does not form part of the visual setting of a Protected Structure, a listed NIAH structure. The site does not form part of an Architectural Conservation Area and the works to which this application relates would not give rise to any additional potential for any disturbance of any archaeological material.</p> <p>The development would not have the potential to significantly impact on any ecologically sensitive site or locations, with the nearest Natura 2000 sites are located over 4km to the east of the site.</p> <p>The site is residentially zoned under the Dublin City Development Plan with its Core Strategy and accompanying policies as well as objectives supporting compact, dense through to consolidated residential development at service accessible locations like this subject to safeguards.</p> <p>The proposed development would not generated significant additional demands on water supply, foul drainage, or public road network. With the existing services and road network having the capacity to absorb the additional two modest apartment units within a built form and functional use that has already been deemed to be acceptable in terms of its setting's capacity to absorb it.</p> <p>I therefore do not consider that the proposed development would have significant cumulative effects on the environment together with any other projects in the vicinity.</p>
<p><b>Types and characteristics of potential impacts</b></p> <p>(Likely significant effects on environmental parameters,</p>	<p><b>Having regard to the characteristics of the development and the sensitivity of its location, consider the potential for SIGNIFICANT effects, not just effects.</b></p>

<p>magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects, and opportunities for mitigation).</p>	<p>Having regard to the modest nature, scale and extent of the proposed development, the size of the site and its location removed from sensitive habitats/features, the likely limited magnitude and spatial extent of effects together with the absence of any potential for significant cumulative effects, I am satisfied that there is no potential for significant effects on the environmental factors set out in Section 171A of the Planning and Development Act 2000 (as amended) having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended).</p>
Conclusion	
Likelihood of Significant Effects	
There is no real likelihood of significant effects on the environment.	EIA is not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	<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.	<p>EIAR required.</p> <p>Not applicable.</p>

Inspector: \_\_\_\_\_ Date: 21<sup>st</sup> day of May, 2025.

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

(only where Schedule 7A information or EIAR required)