



THORNTON O'CONNOR  
TOWN PLANNING

0 39123 - 21

28 APR 2021

Cost: 1,500 Type: Charge  
Time: 12-30 By: Travel

# FIRST PARTY APPEAL

## First Party Appeal

In respect of a Mixed-Use Development at:

Nos. 42-44 (including the former Quinn's Public House),  
46, 48, 48B, 50 and 50A Drumcondra Road Lower (including  
a laneway access connecting to St Joseph's Avenue),  
Dublin 9

Submitted on Behalf of Discipulo Developments Limited

Dublin City Council Reg. Ref. 2187/21

28<sup>th</sup> April 2021

NO. 1 KILMACUD ROAD UPPER, DUNDRUM, DUBLIN 14, D14 EA89  
+353.1.205.1490 INFO@TOCTOWNPLANNING.IE  
WWW.TOCTOWNPLANNING.IE



The Secretary  
An Bord Pleanála  
No.64 Marlborough Street  
Dublin 1  
D01 V902

Wednesday, 28<sup>th</sup> April 2021

Dear Sir/Madam,

**RE: FIRST PARTY APPEAL IN RESPECT OF A DECISION TO REFUSE PERMISSION FOR A MIXED-USE DEVELOPMENT COMPRISING 3 NO. COMMERCIAL UNITS AND 50 NO. BUILD TO RENT APARTMENTS AT NOS. 42-44 (INCLUDING THE FORMER QUINN'S PUBLIC HOUSE), 46, 48, 48B, 50 AND 50A DRUMCONDRA ROAD LOWER, DUBLIN 9 (INCLUDING A LANEWAY ACCESS CONNECTING TO ST JOSEPH'S AVENUE).**

Dublin City Council Reg. Ref.: 2187/21

## 1.0 INTRODUCTION

Thornton O'Connor Town Planning<sup>1</sup> in association with MCA Architects<sup>2</sup>, 3D Design Bureau<sup>3</sup> and Rob Goodbody Conservation Architect<sup>4</sup> have been retained by Discipulo Developments Limited, City Quarter, Lapps Quay, Cork, T12 X6NN to prepare a First Party Appeal in respect of a Decision to Refuse permission for the demolition of existing buildings and provision of a mixed-use development of 3 No. commercial units and 50 No. Build-to-Rent apartments at the site of Nos. 42-44 (including the former Quinn's Public House), 46, 48, 48B, 50 and 50A Drumcondra Road Lower, Dublin 9 (including a laneway access connecting to St Joseph's Avenue).

The application submitted to Dublin Council on 9<sup>th</sup> February 2021 sought permission for the development described below:

*'The proposed development will principally consist of: the demolition of all existing structures on site (1,436 sq m) including Nos. 42-44 (including the former Quinn's Public House), No. 46 and the surviving façades of Nos. 48B, 50 and 50A Drumcondra Road Lower, Dublin 9; and the provision of a part 2 No. to part 5 No. storey over partial basement mixed-use development containing 3 No. commercial units including a bookmakers (131 sq m), a café (46 sq m) and a retail unit (84 sq m) at ground floor level and 50 No. Build-to-Rent apartments (11 No. studio units, 33 No. one bedroom units and 6 No. two bedroom units) and internal communal amenity/support facilities (224 sq m). The scheme which has a gross*

<sup>1</sup> No. 1 Kilmacud Road Upper, Dundrum, Dublin 14, D14 EA89

<sup>2</sup> No. 4 Hanover Wharf, Asgard Road, Dublin 2, D02 HX39

<sup>3</sup> No. 65 Rock Road, Blackrock, Co. Dublin, A94 PT62

<sup>4</sup> Old Bawn, Old Connaught, Bray, County Dublin



*floor area of 3,157 sq m in addition to a part basement measuring 338 sq m, also includes an external deck access facing south extending from first level to third floor levels.*

*The residential units will be principally accessed from St Alphonsus Avenue with the scheme including pedestrian and cyclist access from the laneway to the west connecting to St Joseph's Avenue. The development also includes bicycle parking; bin stores; comms room; meter room; ESB substation; wintergardens and balconies facing north, east and west; roof garden facing north, east and west; green roofs; PV panels; boundary treatments; hard and soft landscaping; lighting; plant; and all other associated site works above and below ground'.*

Dublin City Council decided to issue a *Notification of Decision to Refuse Permission* for the development for 3 No. reasons on 1<sup>st</sup> April 2021 (Dublin City Council Reg. Ref. 2187/21). An overview of key aspects of the Planning Officer's Assessment is provided at Section 2.0 of this document and the Grounds of Appeal are set out in Section 3.0.

## 1.1 Enclosures

We enclose a cheque in the amount of €1,500.00 which is the requisite fee to make a First-Party Appeal.

### 1.1.1 Option B Layout Drawings Prepared by MCA Architects

In addition to the drawings and documents originally submitted to Dublin City Council on 9<sup>th</sup> February 2021, MCA Architects have prepared drawings of an Option B layout for the proposed development, which responds to some of the concerns raised by Dublin City Council in their assessment of the original scheme. The Applicant is happy to accept a Condition from the Board to develop the scheme in accordance with the Option B layout.

| MCA Architects                  |   |       |      |
|---------------------------------|---|-------|------|
| Drawing No.                     | Drawing Title   | Scale | Size |
| DRM MCA- 00- ZZ- DR- A- 1020ABP | Option No.2<br>Alternative Layout – First Floor Plan  | 1:200 | A3   |
| DRM MCA- 00- ZZ- DR- A- 1021ABP | Option No.2<br>Alternative Layout - Second Floor Plan | 1:200 | A3   |

## 2.0 OVERVIEW OF PRE-PLANNING STAGE CONSULTATIONS AND PLANNING ASSESSMENT

### 2.1 Extensive Positive Engagement with Dublin City Council Prior to the Lodgement of the Application

The Applicant engaged extensively with Dublin City Council prior to the lodgement of the application, with 2 No. consultation meetings taking place on 12<sup>th</sup> August 2020 and 25<sup>th</sup> November 2020 respectively. It should be noted that significant documentation was provided for the purpose of these meetings including an Architectural Heritage Impact Assessment, a Daylight/Sunlight Assessment, Computer Generated Images of the scheme and a detailed Planning Statement and Architectural pack.

The Applicant and the Design Team responded to any concerns raised by the Planning Officer during the meetings. At the first meeting on 12<sup>th</sup> August, the Planning Officer did have some fundamental concerns with the layout of the scheme and extensive design changes were made to address them. Key concerns raised during the first meeting are set out below.

#### Key Concerns Raised at Pre-application Meeting No. 1:

- During the meeting on 12<sup>th</sup> August 2020, the Planning Officer from Dublin City Council queried whether the communal open space at ground floor level was suitably overlooked (as the design at that time provided the bedrooms to the units at the deck access side and Living spaces facing St. Alphonsus Avenue), highlighting Dublin City Council's preference for external amenity spaces to be usable, safe, overlooked and not located too close to the private open space of residential units.
- The representative of Dublin City Council outlined concerns regarding the visual appearance of the proposed deck access.
- It was acknowledged that overlooking is not an issue in relation to the dwellings along St Alphonsus Avenue, as they are already overlooked due to their location along a public street. However, the proximity of balconies within the subject scheme to the dwellings along St Alphonsus Avenue was highlighted due to the potential for noise generation.
- During the initial Pre-Planning Consultation, Dublin City Council noted that the central courtyard did not benefit from sunlight amenity but did acknowledge that this is due to the proximity of the existing St. Vincents Centre is beyond the Applicant's control. It was noted that subject scheme includes the provision of a communal roof terrace (83 sq m) which has excellent access to daylight and sunlight.

#### Key Design Changed Made in Advance of Meeting No. 2:

Key design changes were made to the scheme for the purposes of the second pre-planning meeting as summarised below:

- The layout of the upper floor units facing onto St Alphonsus Avenue was flipped following the initial Pre-Planning Consultation. As a result of this change, the bedrooms face onto St Alphonsus Avenue, thus reducing the potential for overlooking to the adjacent properties and increasing the passive surveillance of the internal courtyard (by the living spaces facing the courtyard).



- The external deck access was subject to detailed design. The metal frame provides mesh panels with planting applied to create visual interest to the internal elevation to the courtyard below. The elevation is also articulated by projecting breakout zones from the deck on each level, which have the added benefit of providing passive surveillance to the courtyard below.
- Wintergardens were provided in lieu of balconies along the north elevation adjacent to St Alphonsus Avenue to address the previous concerns of Dublin City Council regarding the potential for noise generation.

**Key Point:** The Planning Officer confirmed at the second Pre-Planning meeting that the amended design addressed the concerns previously issued. A key discussion point at the meeting was the two layout options and whether it would be preferable to have the bedrooms facing St. Alphonsus Avenue (to allow the living spaces to overlook the courtyard and be south facing) or whether it would be preferable to have the living spaces facing St. Alphonsus Avenue with direct access to the wintergardens. The Planning Officer concluded that it was their opinion that it would be preferable to have the living spaces facing south and overlooking the courtyard. The Planning Officer did note that the deck provides additional open space for a small number of units accessed directly from the living spaces. There were no concerns raised at the second meeting and the meeting was considered to be highly positive.

The Applicant acknowledges that any feedback provided during Pre-Planning Consultations cannot prejudice the determination of a subsequent planning application. However, it is incumbent on Planning Authorities to recognize that any feedback or advice provided during Pre-Planning Consultations is taken in good faith and will inform the detailed design phase undertaken by a multi-disciplinary team of qualified professionals prior to lodging a Planning Application.

It is highly regrettable in this instance that despite the Design Team carefully considering the pre-planning feedback and incorporating it into the detailed design of the subject scheme, Dublin City Council decided to Refuse Permission for the subject scheme for multiple reasons, including reasons that had been discussed and agreed at length during the consultation stages.

It is notable that the Planning Officer's Report provides only a brief summary of the 2 No. Pre-Planning Consultations between the Applicant and Dublin City Council which in our opinion does not reflect the positive nature of the second meeting in particular and the significant efforts made to amend the scheme to accord with the recommendations of the Planning Officer.

## 2.2 Key Comments from Planning Officer's Report

In preparing this Appeal, we have undertaken a review of the assessment of the subject scheme by Dublin City Council. A detailed Planning Officer's Report was prepared in the assessment of the application for the subject scheme, with the conclusions provided in respect of key assessment areas outlined in the forthcoming section.



### 2.2.1 Principle of Development

In assessing the Principle of the Proposed Development, the Dublin City Council Planning Officer's Report noted that:

*'Residential development is permitted in principle in both the Z1 and Z4 zoning. A number of third parties have commented on the unfavourability of the build to rent model. Build-to-rent is a residential use, and is permitted in principle in the zoning. Its provision is part of government policy under the Ministerial Guidelines (Sustainable Urban Housing: Design Standards for New Apartments (DOHLGH, 2020). There is no provision under these guidelines (unlike the no-longer-permitted co-living model) to monitor or suppress their proliferation.*

*The commercial uses are located in the part of the site zoned Z4, and each use (betting office, shop, and café) are permitted in principle.'* [Our Emphasis]

### 2.2.2 Principle of Demolition

In assessing the Principle of the Proposed Demolition, the Planning Officer's Report noted that:

*'Permission was granted in 2016 for the demolition of all but part of the front elevations of building numbers 48, 48B, 50 and 50A, following the submission of a structural condition survey demonstrating their derelict uninhabitable condition. Since then, the site has been expanded to include no 46 and no 42-44 (Quinn's pub). It is noted that under policy CHC1, there is a presumption against the demolition of older buildings that make a positive contribution to the character, appearance and quality of local streetscapes, and which contribute to the sustainable development of the city due to their imbued energy.'* [Our Emphasis].

**Key Point:** The demolition of Nos. 48, 48B, 50 and 50A Drumcondra Road Lower took place a number of years ago. Quinn's Pub (Nos. 42-44) ceased trading in 2020 as it was not a viable business, the building ultimately formed part of the sale of the overall lands which form the subject site of this Planning Application. In their present form, the buildings do not make a positive contribution to the character and appearance of the local streetscape.

The Planning Authority was furnished with an Architectural Heritage Impact Assessment prepared by Rob Goodbody, Historic Buildings Consultant as part of first pre-application consultation package. It is noted that no concerns were raised at any time during the pre-application stage regarding the demolition of the buildings. The Dublin City Council Conservation Officer or Deputy Officer did not attend either of the meetings.

Further detail and justification for the proposed demolition of the existing buildings on the subject site is provided in Section 3.4.1 of this Appeal.



### 2.2.3 Proposed Height

In assessing the proposed height of the subject scheme, the Planning Officer's Report noted that:

*'The front block is the tallest, with a maximum of 17.1 metres (5 storeys) along Drumcondra Road Lower, stepping down to 14.1 metres along the St Alphonsus Avenue boundary, due to the setback of the top floor. The block running along St Alphonsus Avenue is four storeys (c. 13 metres) including the setback top floor, and three storeys (c. 15) metres at street edge. The block to St Joseph's Avenue is two storeys, c. 6.5 metres. **These heights all comply with the provisions of the height strategy at Section 16.7 of Dublin City Development Plan 2016-22.** The acceptability or otherwise of the height is subject to compliance with the other Development Plan criteria and the protection of residential amenity. It is noted that a large number of the objections received objected to the scale, character, and proximity of the building, rather than its height per se'. [Our Emphasis].*

*'Regarding the scale and design of the proposal, the Design Statement submitted by Crawford Architecture (sic) notes that the building is stepped down and set back from surrounding sites. **Nonetheless, it is taller than the buildings it would replace, and significantly taller than the former chapel building it abuts. Due to the setback of the ABC building, it would be prominent in views from the south.**' [Our Emphasis].*

**Key Point:** Having regard to the recent narrative of national and regional policy, the central and accessible location of the subject site and the excellent availability of public transport, it is incumbent on the Applicant to seek the appropriate densification of this key underutilized site.

It is our professional planning opinion that the proposed development would successfully achieve the appropriate densification of the subject site through a sensitively designed increase in height. Further detail in relation to the proposed massing, scale and height of the subject scheme is outlined in Section 3.3.1 of this Appeal.

### 2.2.4 Density

In assessing the proposed density of the subject scheme, the Planning Officer's Report noted that:

*'The proposed density is 263 units per hectare. **Increasing densities by developing infill sites and brownfield sites is an appropriate, efficient use of well-serviced appropriately zoned land in the built up area.** The provision of new homes at a location that can support sustainable development at an appropriate scale of provision is in compliance with NPF objective 33 and 35. **There is no upper limit set on densities in the Development Plan.** It is noted that 'units per hectare' is a blunt instrument, as developments with a larger number of smaller units (such as this one) can have a much higher density while having the same quantum of development as a development with fewer, larger units. [Our Emphasis]*

*'The proposed plot ratio is 1:1.63, which is at the higher end of the limits indicated by the Development Plan (0.5-2.0) for the Z1 zoning, and approaches the standard indicated for the Z4 zoning (2.0). The proposed site coverage is stated as 46.7%, which is within the range of the indicative site coverage (45%-60%) set for Z1 zoning.'*



**Key Point:** The Planning Officer duly acknowledged that densities of 'Build to Rent' units such as the subject scheme can be 'skewed' as a greater number of smaller units can be achieved within a building form. The plot ratio is well within the indicative range and the site coverage is at the lower end of the range provided in a Development Plan made over five years ago, well in advance of the publication of recent National and regional level policies which clearly encourage 'compact growth' and an urgent need to counteract the sprawl of our cities.

### 2.2.5 Private Open Space

In relation to the balconies/wintergardens for the apartment units, the Planning Officer's Report noted that:

*'The requirement for private open space (as per both the Ministerial Guidelines, and the Development Plan) is 4 sq m for studios, 5 sq m for one-bedroom apartments, and 7 sq m for two-bedroom apartments. **These quantitative requirements have been met or exceeded for each apartment, and all balconies are at least 1.5 metres in depth;** however, there are concerns about the quality of a number of the balconies'. [Our Emphasis]*

**Key Point:** The Planning Officer's concerns on the quality of a number of the balconies relates to their position facing St. Alphonsus whereby they serve bedroom units. This is discussed in further detail in Section 3.2 of this Appeal.

### 2.2.6 Overlooking and Overshadowing

In relation to the potential for overlooking to adjacent properties, the Planning Officer's Report noted that:

*'While St Alphonsus Avenue is a public street, and therefore the expectation of privacy is not as great as to the rear of houses, this is a narrow street and not heavily trafficked, there would nonetheless be impacts on privacy, especially on the first floor bedroom windows. The impacts of winter gardens at first and second floor, and balconies at third floor would exacerbate this overlooking.'*

In assessing the potential for the subject scheme to overshadow adjacent properties, the Planning Officer's Report noted that:

*'The impacts on neighbouring gardens are not specifically stated, but the shadow studies submitted indicate that the rear garden of 1 St Alphonsus Avenue would not be unduly affected, while the rear garden of 52 Lower Drumcondra Road would be heavily overshadowed.'*

*On the whole, these impacts, in combination with each other and in combination with overbearing impacts and impacts on privacy, would have unacceptable effects on neighbouring residential amenity'.*

**Key Point:** As concerns regarding overlooking and overshadowing formed part of a refusal reason, a response to these matters is set out in Section 3.3 of this Appeal.



## 2.2.7 Archaeology and Built Heritage

The Planning Officer in their Report stated:

*'The file was circulated to the Conservation Office, who recommend a refusal of permission, noting that the architectural heritage impact assessment submitted is inadequate, as it includes only a partial survey of the building, and that the demolition of a building considered to be of regional significance has not been justified. The submitted Architectural Heritage Impact Assessment notes recent permissions for the demolition of two pubs, Howl at the Moon and Kiely's of Donnybrook as precedent. However, neither of these was identified by the NIAH as being of special interest.*

*In addition to the proposed demolition, there are concerns regarding the form, bulk and appearance of the proposal, having regard to the prevailing character of the area'.*

**Key Point:** A response to these concerns has been prepared by Rob Goodbody, Historic Buildings Consultant and is set out in Section 3.4 of this Appeal.

## 2.2.8 Conclusion

The Planning Officer's Report concluded that:

*'While the site is an appropriate one for residential and commercial development, and indeed has a live permission on the site, the Planning Authority has concerns regarding a significant number of issues in the current application.'*

On 1<sup>st</sup> April 2021, Dublin City Council decided to Refuse Permission for the proposed development, citing 3 No. reasons each of which will be addressed in Section 3.0 of this Appeal.

**Key Point:** In our opinion, as discussed in the Grounds of Appeal in Section 3.0, a key issue is whether a key site in the centre of Drumcondra, located close to the city centre, public transport and commercial facilities should be constrained in developing due to its surrounding low rise, low density context? In our opinion, the scale of the low density housing adjacent to the site should not be dictating the form of development to be provided on a key site in the city. The subject scheme provides planning gain to the dwellings on St. Alphonsus Avenue by proposing a setback of development (3-4 metres greater than the extant scheme) along the northern building line to facilitate public realm improvements in the form of a new landscaped and tree-lined footpath.

### 3.0 GROUNDS OF APPEAL

#### 3.1 Introduction to Grounds of Appeal

The site subject to this First Party Appeal is situated on lands zoned 'Z1- Sustainable Residential Neighbourhoods' where the stated aim is to 'protect, provide and improve residential amenity' and Z4 'District Centre' where the stated objective is to 'to provide and improve mixed-services facilities' in the *Dublin City Development Plan 2016 -2022*. The key tenet for the proposed development works is to provide 50 No. high quality Build-to-Rent residential units and 3 No. commercial units on a currently underutilised site that currently comprises 3 No. industrial buildings.

The proposed development of 50 No. apartment units will contribute to the prevailing undersupply of residential accommodation in Dublin City and will ensure that the visual impact of the site will be significantly improved from its existing industrial nature when viewed from the surrounding locale.

The inclusion of the 3 No. commercial units will not only satisfy the stated zoning objective, which is 'to provide and improve mixed-services facilities' but will also reinvigorate the active street frontage along the Drumcondra Road with the added benefit of passive surveillance along the street. This will represent a significant planning and community gain for the surrounding environment of the subject site.

This First Party Appeal will demonstrate that the proposed mixed-use development is fully consistent with the *Dublin City Development Plan 2016-2022* by responding to the 3 No. reasons for refusal which are set out in the forthcoming sections.

#### 3.2 Reason for Refusal No.1 – Appropriate Residential Amenity

The first Reason for Refusal states that:

*'The proposed development would not provide appropriate residential amenity to future residents due to the lack of quality private open space accessible from living areas, in contravention of the Ministerial Guidelines Design Standards for New Apartments – Guidelines for Planning Authorities (2020), and the lack of adequately sunlit well overlooked accessible communal amenity space. The provision of balconies or wintergardens that are accessible through bedrooms only compromises the function of both the bedroom and the private open space.'* [Our Emphasis].

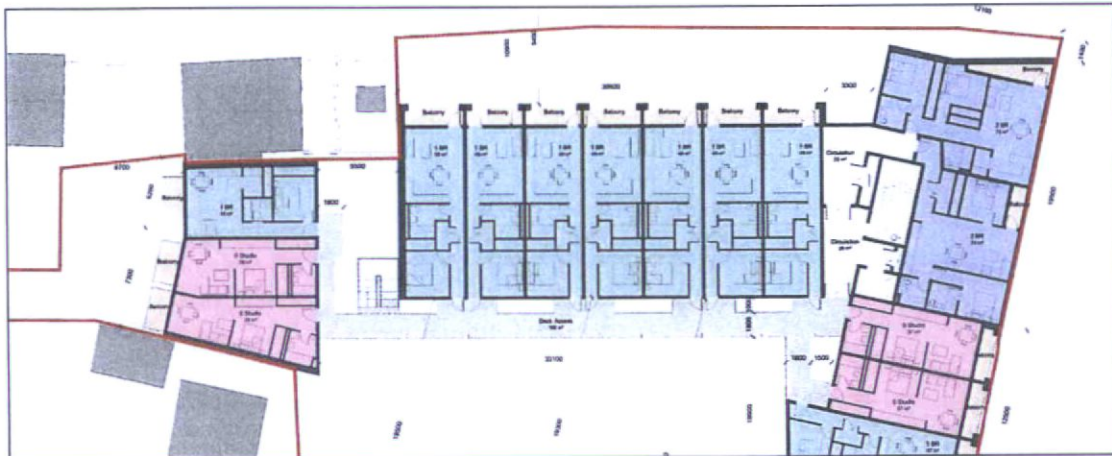
##### 3.2.1 Response to Reason for Refusal No. 1:

*The Layout of The Units in Block B was the Preferred Layout by the Planning Authority – a Different Layout was Originally Provided with Balconies Accessed Directly from the Living Spaced But the Planning Authority Requested it be Changed to Allow Living Spaces to Overlook the Courtyard*

As outlined in Section 2.2 of this Appeal, before submitting the Planning Application for the subject scheme the Applicant engaged in extensive Pre-Planning Consultations with Dublin City Council. An initial Pre-Planning meeting was held with Dublin City Council on 12<sup>th</sup> August 2020



and the scheme at that time provided balconies accessed directly from living/kitchen/dining areas.



**Figure 3.1:** Extract from First Floor Plan Showing Pre-planning Stage 1 Scheme which Provided Balconies Accessed via the Kitchen/Living/Dining Spaces

**Source:** Document Entitled '*Drumcondra Road Preplanning Submission*' prepared by MCA Architects

At the Pre-planning meeting in August 2020, the Planning Officer raised a concern about the potential for noise from the balconies and also queried whether having the bedrooms to the south was the correct design decision as the communal open space to the south needs to be subject to extensive overlooking. Whilst balconies are the norm in urban areas and thus it was felt that the concern was ill founded, in order to secure the support of Dublin City Council the layout of the upper floor units facing onto St Alphonsus Avenue was flipped. As a result, the bedrooms faced onto St Alphonsus Avenue with living spaces to the south increasing the passive surveillance of the internal courtyard.

The two design options were considered at length at the pre-planning meeting and the design team clearly understood that the Planning Authority's preference was to have the bedrooms to the northern side of Block B and the living spaces to the south. Thus, the drawings provided for the second pre-planning meeting and the as-lodged scheme provided this arrangement as per Figure 3.2 below:

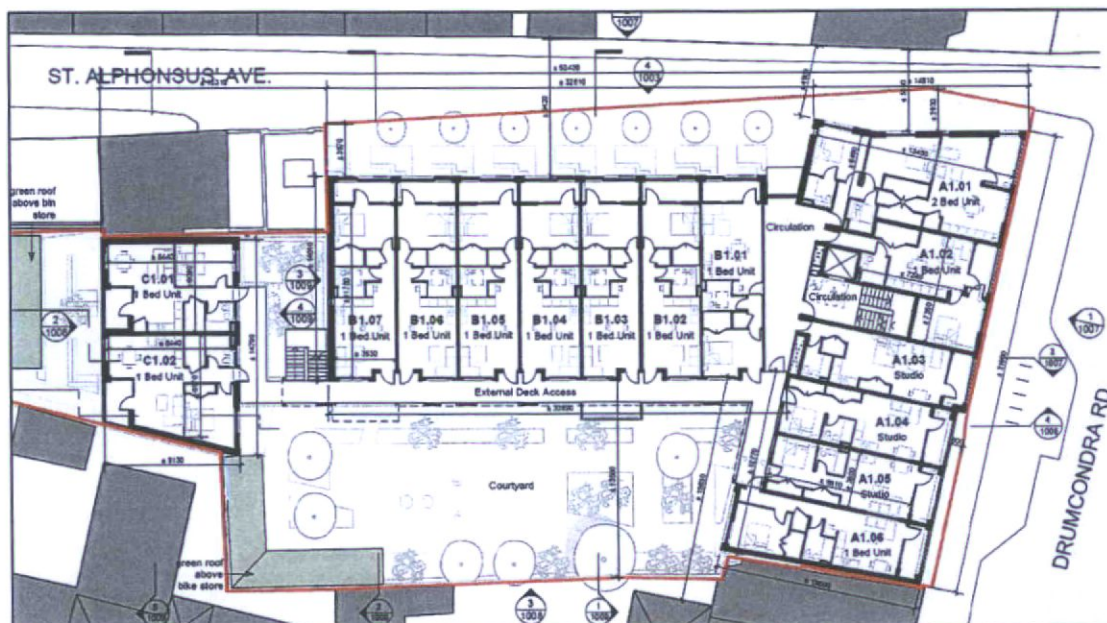


Figure 3.2: Extract from the First Floor Plan as Submitted with the Planning Application, Showing the Bedrooms Located Along St. Alphonsus Avenue

Source: Drawing No. DRM-MCA-00-ZZ-DR-A-1005, Prepared by MCA Architects

**Key Point:** As the Planning Authority appear to have changed their opinion on this matter, we are now submitting for the consideration of the Board an Option 2 layout. The Option 2 layout is very similar to the arrangement provided in the initial pre-planning meeting (as per Figure 3.1 above) with the bedrooms to the southern side of Block B.

### *The Layout of the As-Lodged Scheme with Living Spaces to the South is Considered to Present the Preferred Internal Layout*

Paragraph 3.36 of the *Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities* (2020) states that:

*'Balconies should adjoin and have a functional relationship with the main living areas of the apartment. In certain circumstances, glass-screened 'winter gardens' may be provided. The minimum required areas for private amenity space are set out in Appendix 1'.*

Paragraph 3.37 of the same Guidelines state that *'It is **preferable** that balconies would be primarily accessed from living rooms..'* [Our Emphasis].

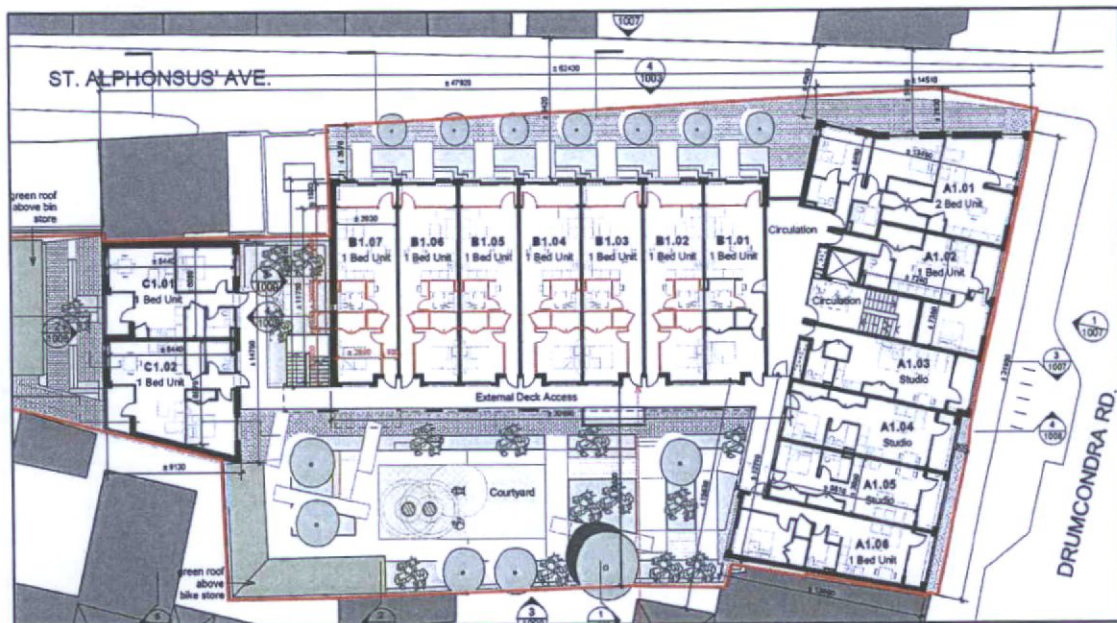
The as-lodged scheme provides the wintergardens on Block B directly adjacent to bedroom accommodation for the majority of the units. This allows bedrooms to face north and living spaces to face south, which is a preferred aspect from an amenity perspective. This also allows the living spaces to actively overlook the internal courtyard which was a key issue for the Planning Authority. Whilst the majority of the private open space is thus accessed from the bedrooms, it is also noted that the break-out spaces to the deck are provided with a functional relationship to the living spaces which will provide an alternative open space for social interaction with immediate neighbours fostering community spirit. Whilst we note that the Guidelines state



that it is 'preferable' that balconies are accessed primarily from living rooms, it is the opinion of the Design Team that having regard to the layout and positioning of the subject site, the as-logged scheme will create the best homes.

***The Applicant is Happy to Accept a Condition to Implement the Scheme in Accordance with the Option 2 Layout Which Provides Private Open Space Accessed Directly from Living Areas***

The Option 2 layout is shown on Drawing Nos. DRM MCA- 00- ZZ- DR- A- 1020ABP and DRM MCA- 00- ZZ- DR- A- 1021ABP prepared by MCA Architects, copies of which are enclosed with this Appeal along with an extract presented in Figure 3.3 below.



**Figure 3.3: Amended Layout with the Main Living Areas Directly Adjoining the Balconies**

**Source: Drawing No. DRM MCA- 00- ZZ- DR- A-1020ABP, Prepared by MCA Architects**

**Key Point:** In providing Option No. 2, the intention of the Design Team is to offer An Bord Pleanála the opportunity to consider which of the 2 No. differing layouts is more appropriate for the context of the subject site. Option No. 2 provides a layout of the proposed units within Block B flipped to ensure strict compliance with Paragraph 3.36 of the Apartment Guidelines. No other changes are proposed to the subject scheme in Option No. 2.

***Some 251 sq m Communal Open Space is Required to Accord with the Provisions of the Apartment Guidelines and the Scheme Significantly Exceeds that Quantum with the Provision of 632 sq m Communal Open Space***

Refusal Reason No. 1 also raises a concern regarding the lack of adequately sunlit, well overlooked private open space. In responding to this matter, we note that the proposed development includes the provision of 50 No. Build to Rent units comprised of 11 No. studio apartments, 33 No. one bed apartments and 6 No. two bed apartments.



The 'Sustainable Urban Housing: Design Standards for New Apartments: Guidelines for Planning Authorities' (December 2020) set the minimum requirements for communal open space:

| Minimum Requirements for Communal Amenity Space (per unit) |                      |                                   |
|--|----------------------|-----------------------------------|
| Unit Type  | Requirement Per Unit | Requirement of the Subject Scheme |
| Studio   | 4 sq m               | 44 sq m                           |
| One Bedroom  | 5 sq m               | 165 sq m                          |
| Two Bedroom  | 7 sq m               | 42 sq m                           |
| <b>Total Requirement</b>                                   |                      | <b>251 sq m</b>                   |

The subject scheme has a total requirement for 251 sq m Communal Open Space to accord with the minimum areas outlined in the Apartment Guidelines.

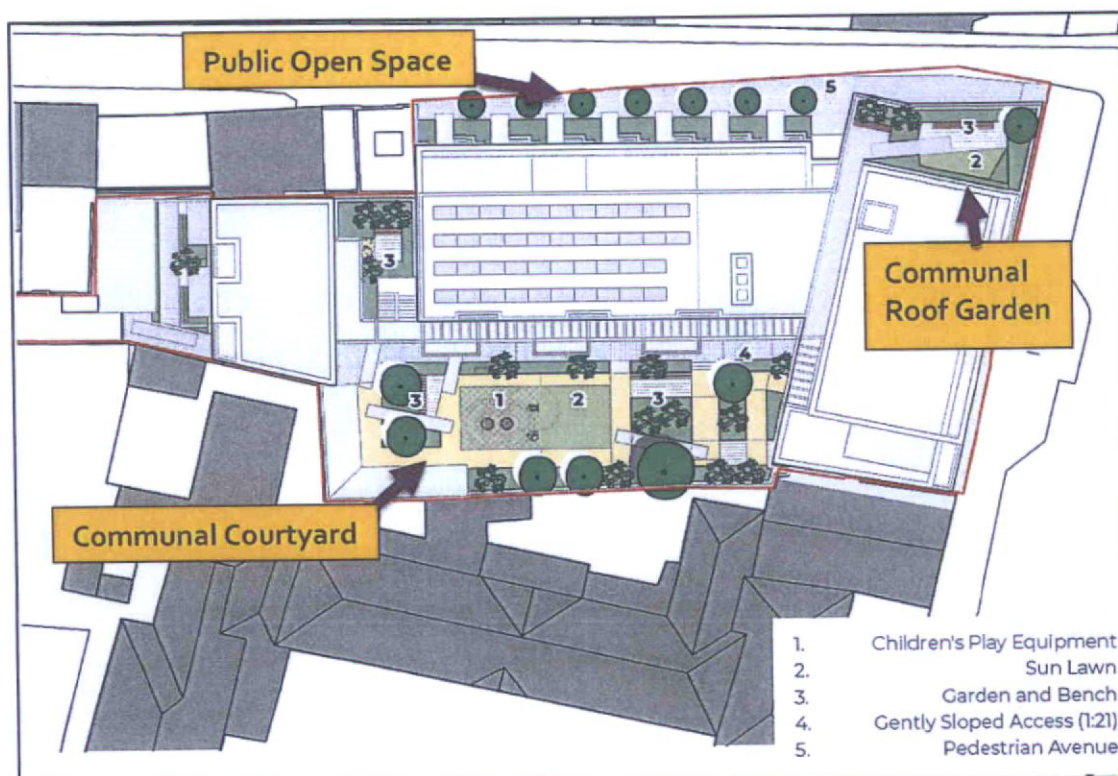


Figure 3.4: Map Depicting the Open Space Provision of the Subject Scheme

Source: Design Statement prepared by MCA Architects and Submitted with the Planning Application

**Key Point:** The development proposes to provide 632 sq m outdoor communal amenity space, in the form of a courtyard at ground floor level (549 sq m) and a roof terrace (83 sq m). Thus, the scheme provides more than 2.5 times the quantum of communal open space required to accord with the Guidelines.

The significant quantum of communal open space, in addition to the public open space provided in the proposed street widening to St. Alphonsus Avenue has resulted in the low site coverage for the scheme of 46.7% (as discussed in Section 2.2.4 above).



### **Description of the High Quality Landscaped Spaces Proposed – Shaded Areas will Provide Shade Tolerant Planting to Create a Unique Character**

The proposed Communal Courtyard (549 sq m) was described in the Landscape Design Rationale Report submitting at the Planning Application Stage and prepared by Stephen Diamond Associates Chartered Landscape Architects as follows:

*'Consisting of informal parkland elements with materials, the ground level communal courtyard combines area of open lawn space with buffer and perennial planting and meandering pathways. Circulation pivots around a central grass lawn. We see this lawn as a fundamental landscape element, recalling the familiar domestic character of a family garden. South and west orientated embedded wooden benches are placed with paved terraces to offer comfortable, pleasant and private gathering areas to the residents, bringing the outside nature into the courtyards. Planters and feature trees are strategically positioned to give sense of scale and screening without blocking the sunlight. Designed and fully integrated gently sloped pathways, in accordance with Technical Guidance Document Part M – Access and Use Building Regulations (2010), provide access from entrance lobby level to the central lawn space and to each intermediate level for ground floor units. Those areas receiving reduced levels of direct sunlight, principally along the southern extremes and northern "Secret Garden" are characteristically defined by shade tolerant plant species, intersected by pathways leading through to the various seating areas and terraces, these shade gardens will offer their own unique character reminiscent of a shaded woodland walk.*

*Access points are provided onto the courtyard for these residents encouraging communal activity. Providing courtyard level access to apartments will help bring life to the courtyard and encourage interaction amongst residents much like a terraced street. **Such communal gathering spaces serve an important function in apartment developments where residents can often feel isolated from their neighbours.** Buffer planting species are proposed to avoid overlooking and people walking close to ground floor apartments. Conceived as a place of escape or refuge from the noise and pollution of the adjoining roads, **we envisage the communal courtyard as a sanctuary to the hectic nature of city life. It has been designed to provide a distinctive social space configured to encourage interaction between neighbours and generate an enhanced sense of community.**' [Our Emphasis]*

The roof garden (83 sq m) was described by Stephen Diamond Associates Chartered Landscape Architects as follows:

*'Landscape proposals for level 04 take ground floor elements and scale them down into an attractive, enclosed garden space with central sun lawn, paved terracing, raised planted beds and south orientated seating occupying intimate and open seating areas. Shelter is provided by the wrap round form of the proposed architecture. **We would note the positive impact of the architectural design in enclosing the courtyard space to create a favourable micro-climate, sheltered from the prevailing south westerly winds.***

***Gathering spaces are set back from perimeter removing the potential for overlooking onto sensitive boundaries. Dense perennial planting provide an extensive buffer and visual separation to adjacent residents while forming an attractive, vegetative background to seated areas. Min. 1.5m plinth wall and glass balustrade to outer perimeter of roof terraces.**' [Our Emphasis]*



*The Impacts to the Sunlight Infiltration to the Courtyard are Imposed by a Third Party Property to the South – However during Summer Months the Courtyard will Provide a Sunlit Space*

The Applicant acknowledges that owing to the surrounding context of the subject site, which includes a 3 No. storey structure to the south, the average sunlight hours received by the communal courtyard on March 21<sup>st</sup> and December 21<sup>st</sup> falls below the target outlined in the BRE Guidelines. However, it should be noted that having regard to the inclement weather conditions found in Dublin, there would naturally be less demand for outdoor communal facilities at these times of the year.

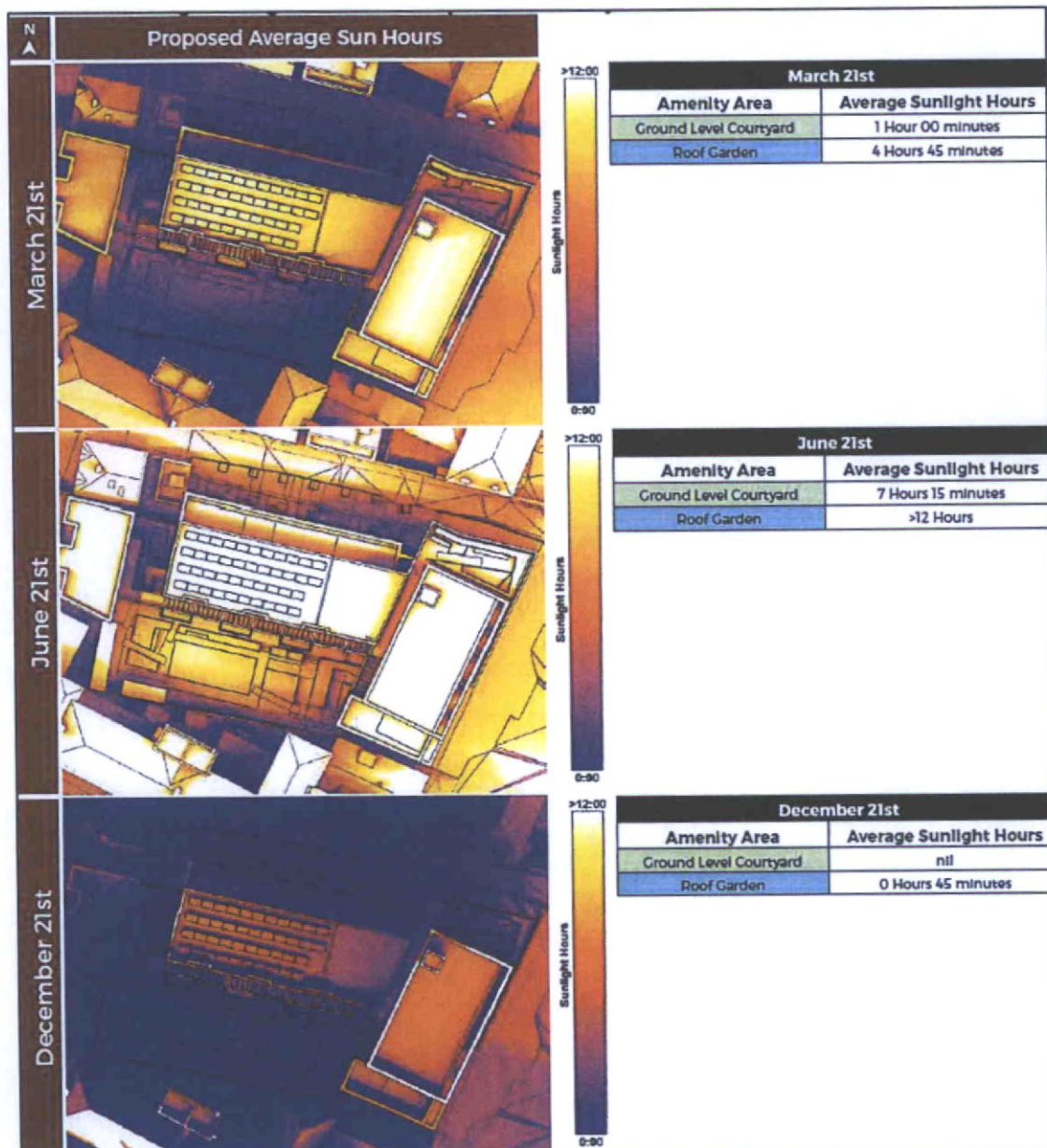


Figure 3.5: Diagram Showing the Average Sunlight Hours to the Proposed Amenity Areas as outlined in the Daylight and Sunlight Assessment Report submitted with the Planning Application

Source: 3D Design Bureau



**Key Point:** Importantly, as demonstrated in Figure 3.5 above (abstracted from the Daylight and Sunlight Assessment Report submitted with the application), on June 21<sup>st</sup> the communal courtyard receives 7 hours and 15 minutes of sunlight. The courtyard is therefore capable of providing an enjoyable and sunlit space during the summer months when the space is most likely to be used by residents.

Paragraph 6.7 of the *Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities* (2020) states that:

*'Where an applicant cannot fully meet all of the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting taking account of its assessment of specific. This may arise due to a design constraints associated with the site or location and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution'. [Our Emphasis]*

As previously noted, the proximity of a 3 No. storey building to the southern boundary of the subject site presents a design constraint to the subject scheme. Although the subject scheme includes a generous communal courtyard at ground floor level, it is acknowledged that owing to the constraints of the surrounding context this area does not receive sunlight amenity in line with the BRE guidelines.

**Key Point:** Therefore, in accordance with Paragraph 6.7 of the Apartment Guidelines, the subject scheme includes the provision of a compensatory design solution in the form of a high-quality designed roof terrace which receives excellent levels of sunlight amenity throughout the year.

#### ***The Proposed Roof Terrace Will Provide Excellent Access to Sunlight as Acknowledged by the Planning Officer***

The Dublin City Council Planning Officer acknowledges the excellent sunlight amenity of the roof terrace:

*'The courtyard is located on the south part of the site, but is heavily overshadowed by the ABCD building which runs the length of the site at a distance of 3-10 metres from the boundary. As such it does not achieve the typical BRE standard (having 2 hours of sunlight over 50% of the area on March 21st), with only 20.1% of the area achieving that standard. The roof garden would have excellent access to sunlight, achieving 2 hours of sunlight over 94.5% of its area on March 21st.'* [Our Emphasis]

The Planning Officer acknowledged that the location of the roof terrace at the corner of Drumcondra Road Lower and St. Alphonsus Avenue is appropriate:

*'The proposed fourth-floor roof garden has been designed with landscaping and seating to guide users away from the edge; its location on the corner places it directly opposite the blank gable wall of 52 Lower Drumcondra Road, mitigating its impact. Such roof gardens can have significant noise impacts on neighbouring properties; however, given the*

*busy road, this is not the most sensitive location. A condition requiring hours of operation would be appropriate in the event of a grant of permission'. [Our Emphasis]*

The Applicant is cognisant of the potential for noise impacts to neighbouring properties emanating from the roof terrace. As acknowledged by the Planning Officer, the proximity of the roof terrace to the corner represents a less sensitive location, mitigating the potential impact to neighbouring properties. The documentation submitted with the Planning Application included an Operational Management Plan prepared by Hooke MacDonald. In relation to the management of the roof terrace, the Management Plan noted that:

*'Access to the terrace will be via fob. To ensure harmonious relationships with neighbours and within the development it is envisaged that the terrace will be open and accessible during the following hours;*

- *Spring (March, April, May) and Summer (June, July, August): 7am – 10pm;*
- *Autumn (September, October, November) and Winter (December, January, February): 7am - 9pm.*

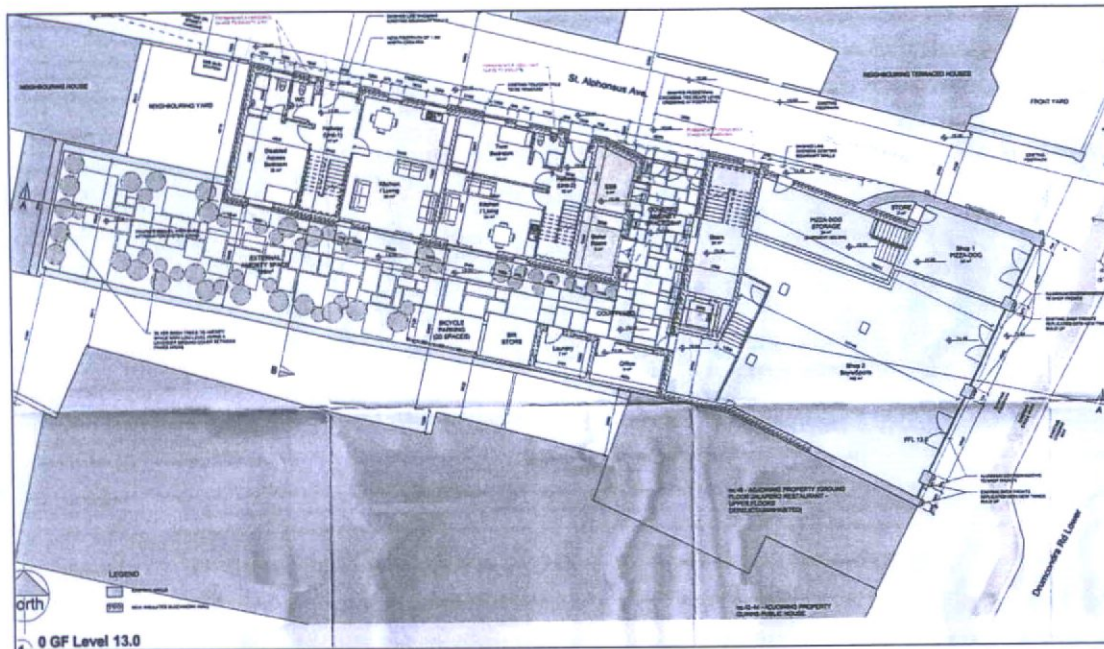
*The aforementioned opening times will be kept under review'.*

Should the Board be minded to Grant Permission for the proposed development, the Applicant is committed to ensuring the appropriate management of the roof terrace and would accept a condition in this regard.

***The Communal Open Space is Provided in the Same Location in the Extant Permission Pertaining to the Site***

The Board should note that there is an extant permission pertaining to the site for the provision of a student development (DCC Reg. Ref. 3999/16). Whilst the site of the extant scheme is smaller than the subject site (as the subject site includes Quinn's pub to form a larger plot) it is noted that the extant scheme provides the open space to the south of the scheme and that space would have been similarly impacted by St. Joseph's to the South preventing some sunlight infiltrating.





**Figure 3.6:** Ground Floor Plan of DCC Reg. Ref. 3999/16 Showing Location of Permitted Open Space to Serve the Student Scheme

**Source:** Dwg. No. 1609 P100 entitled 'Ground Floor and Basement Plan' Submitted with DCC Reg. Ref. 3999/16

In assessing the open space provided with the extant scheme, the Planning Officer that assessed that application stated in their Report that:

*'Some 230 sqm of external open space is proposed to the rear of the two storey units along St. Alphonsus Avenue and a first floor communal room is also proposed. **This is considered acceptable.**' [Our Emphasis].*

**Key Point:** The subject development has retained the general location of the open space at the subject site which was previously considered acceptable by Dublin City Council. The current scheme does however provide a much larger quantum of open space on the enlarged site and in addition provides a high quality sunlit open space in a roof garden environment as a compensatory measure.

***The Location of the Communal Open Space is the Most Logical Position to Present a Strong Urban Frontage and to Provide Adequate Setbacks from Buildings to the South***

From an urban design perspective, the location of the Communal Courtyard is logical. The subject site is directly abutted by a 3 No. storey industrial building (St. Vincent's Centre) along the southern boundary of the subject site. Having regard to the receiving context of the subject site, particularly the requirement to provide adequate setback from the boundary with the 3 No. storey structure to the south the logical location to site any proposed buildings on the subject site is along the northern and eastern boundaries with St. Alphonsus Avenue and Drumcondra Road Lower respectively. The remaining portion of the subject site to the south and east is therefore the only logical place for open space and amenities to be located.



### 3.3 Reason for Refusal No. 2 – Potential Impacts on Neighbouring Properties

The second Reason for Refusal states that:

*'The proposed development would have undue and unacceptable impacts on the residential amenity of neighbouring properties due to the combined impacts of overshadowing on 12 and 13 St Alphonsus Avenue and 52 Drumcondra Road Lower, loss of daylight to those properties and also to 1 and 11 St Alphonsus Avenue, and overlooking and overbearing impacts on 10-13 St Alphonsus Avenue and 52 Drumcondra Road Lower. The proposed development would therefore, seriously injure the amenities of property in the vicinity in contravention of the zoning objective 'to protect, provide and improve residential amenities'*

#### 3.3.1 Response to Reason for Refusal No. 2:

##### ***Analysis of the Impact to Vertical Sky Component at Nos. 12 and 13 St Alphonsus Avenue and 52 Drumcondra Road Lower***

The Daylight and Sunlight Assessment Report carried out by 3D Design Bureau included an assessment of the Vertical Sky Component ('VSC') of surrounding properties, which is defined as:

*'Ratio of that part of illuminance, at a point on a given vertical plane, that is received directly from an overcast sky model, to illuminance on a horizontal plane due to an unobstructed hemisphere of this sky. Usually the 'given vertical plane' is the outside of a window wall. The VSC does not include reflected light, either from the ground or from other buildings.'*

An assessment of the Vertical Sky Component was carried out on a number of surrounding properties, including Nos. 12-13 St Alphonsus Avenue and No. 52 Drumcondra Road Lower.

Of the 3 No. windows assessed within No. 12 St. Alphonsus Avenue, 1 No. ground floor window was found to experience a 'moderate' VSC impact, with the remaining 2 No. first floor windows experiencing a 'slight' impact. As detailed in Figure 3.8 below, a moderate impact is defined as *'An effect that alters the character of the environment in a manner that is consistent with existing and emerging baseline trends.'*

Of the 5 No. windows assessed within No. 13 St Alphonsus Avenue, the proposed development would result in a 'moderate' impact on 2 No. ground floor windows, a 'slight' impact on 2 No. first floor windows and an 'imperceptible' impact on the second floor window.

Of the 6 No. windows assessed within No. 52 Drumcondra Road Lower, the proposed development would result in a 'slight' impact on 2 No. ground floor windows, an 'imperceptible' impact on 1 No. ground floor window, a 'slight' impact on 2 No. first floor windows and an 'imperceptible' impact on 1 No. ground floor window.

It is our professional planning opinion that the level of impact to Nos. 12-13 St Alphonsus Avenue and No. 52 Drumcondra Road Lower which ranges from 'imperceptible' to 'moderate' is acceptable considering the urban context of the subject site. The subject lands are currently an undeveloped site in a key urban location and thus any development of the subject lands would likely have some form of impact on the daylight access of adjacent properties.



## ***Analysis of the Potential loss of Sunlight to Nos. 1, 11, 12 and 13 St Alphonsus Avenue and 52 Drumcondra Road Lower***

The Daylight and Sunlight Assessment Report carried out by 3D Design Bureau included an assessment of the Annual Probable Sunlight Hours ('APSH') of surrounding properties, which is defined as:

*'Annual Probable Sunlight Hours (APSH) is a measure of sunlight that a given window may expect over a year period. It can be defined as the ratio between the annual sunlight hours in a specific location, and the hours of sunlight an assessment point on a window actually receives.'*

*'North facing windows may receive sunlight on only a handful of occasions in a year, and windows facing eastwards or westwards will receive sunlight only at certain times of the day. Taking this into account, the BRE Guidelines suggest that windows with an orientation within 90 degrees of due south should be assessed'.*

An assessment of the 'APSH' of a number of surrounding properties, including Nos. 1, 11, 12 and 13 St Alphonsus Avenue and No. 52 Drumcondra Road Lower was included with the application. The Assessment found that of the 27 No. windows of surrounding properties which were assessed, the impact on the APSH resulting from the proposed development was 'imperceptible' for 21 No. windows, 'not significant' for 1 No. window, 'slight' for 3 No. windows and 'significant' for 2 No. windows.

Whilst we acknowledge that there would be a significant level of effect to the sunlight received by two of the assessed windows, (the ground floor windows at the rear of No. 52 Drumcondra Road Lower), this is to be expected owing to the urban context of the subject site. It should be noted that the overall impact of the proposed development is not significant, owing to the carefully considered design of the subject scheme which includes a setback top floor and the addition of a public footpath along St. Alphonsus Avenue. The intention of these design considerations is to lessen the potential impact of the subject scheme on adjacent properties within the existing built up urban environment.

As demonstrated in Figure 3.7 below, the current view of the subject site from No. 52 Drumcondra Road Lower is of a vacant and unsightly site, which has significant potential to attract anti-social behaviour. This baseline state is totally inefficient in an urban environment. As previously outlined, owing to the urban context of the subject lands any development of the lands will result in a transition in scale, which is to be expected.



**Figure 3.7:** Image Showing the Current View of the Subject Site from No. 52 Drumcondra Road Lower.

**Source:** Google Maps, 2021

**Key Point:** Our Client respectfully questions whether the importance of maintaining the current daylight amenity of No. 52 Drumcondra Road Lower is of such importance as to leave a vacant site in a central and/or accessible location in the midst of a national housing crisis. The subject scheme includes the provision of a new 3-4m wide landscaped and tree-lined footpath along the northern boundary of the subject site (St. Alphonsus Avenue). The provision of this landscaped footpath represents a significant improvement to the existing public realm shown in Figure 3.7 above and therefore represents a significant planning gain for the surrounding area and community. No. 52 Drumcondra recently developed a three storey house in their own back garden (permitted in accordance with DCC Reg. Ref. 2979/09, as extended by DCC Reg. Ref. 2979/09x1) which is to the south and west of the private amenity space of No. 52 and would have compromised the light received to the space. We note that that the planning application for the dwelling showed that a rear garden space of 60 sq m would remain for No. 52, however, from aerial images it is evident that due to the provision of a side access to the new house (a departure from the plan and particulars), No. 52 appears to have a smaller rear yard area of c. 40 sq m.

#### ***Daylight and Sunlight Assessment Report Carried Out in Accordance with Recognised Best Practice***

The Daylight and Sunlight Assessment Report prepared by 3D Design Bureau and submitted with the Planning Application for the subject scheme was carried out in accordance with recognised best practice.

In order to categorize the varying degrees of compliance with the BRE Guidelines, in relation to potential impacts of the proposed development, 3D Design Bureau assigned numerical values to the levels of effect as listed in 'Guidelines on the Information to be Contained in Environmental



Impact Assessment Reports' prepared by the Environmental Protection Agency (Draft of 2017), and to Directive 2011/92/EU (as amended by Directive 2014/52/EU).

|   |  |
|---|--|
| <b>Describing the Significance of Effects</b><br>"Significance' is a concept that can have different meanings for different topics – in the absence of specific definitions for different topics the following definitions may be useful (also see <i>Determining Significance</i> below.). | <b>Imperceptible</b><br>An effect capable of measurement but without significant consequences.   |
|   | <b>Not significant</b><br>An effect which causes noticeable <sup>2</sup> changes in the character of the environment but without significant consequences.         |
|   | <b>Slight Effects</b><br>An effect which causes noticeable changes in the character of the environment without affecting its sensitivities.                        |
|   | <b>Moderate Effects</b><br>An effect that alters the character of the environment in a manner that is consistent with existing and emerging baseline trends.       |
|   | <b>Significant Effects</b><br>An effect which, by its character, magnitude, duration or intensity alters a sensitive aspect of the environment.                    |
|   | <b>Very Significant</b><br>An effect which, by its character, magnitude, duration or intensity significantly alters most of a sensitive aspect of the environment. |
|   | <b>Profound Effects</b><br>An effect which obliterates sensitive characteristics   |

Figure 3.8: Extract from the 'Guidelines on the Information to be Contained in Environmental Impact Assessment Reports'

Source: Environmental Protection Agency

We believe that the interpretation of how these effects can be applied to daylight and sunlight impacts, as stated in the Daylight and Sunlight Assessment, are both appropriate and clearly defined. Such definitions are important to distinguish when making assessments as it differentiates between instances that are marginally outside the recommended level of impact and instances that are more significant.

As aforementioned, a *moderate* level of effect is stated in the Environmental Protection Agency's EIAR guidelines as:

*'An effect that alters the character of the environment in a manner that is consistent with existing and emerging baseline trends.'*

This could be argued as the appropriate level of impact for the subject site, having regard to its urban context.

**Key Point:** The Daylight and Sunlight Assessment Report demonstrates that 96.3% of the assessed windows can be considered between *imperceptible* and *slight* when considering the effect on daylight (VSC). Of the assessed windows, 66.7% were considered *imperceptible* based on the criteria set out in the BRE guidelines. The effect to a further 11.1% of the assessed windows was categorised as *not significant*, which has been applied to windows that showed a reduction that was marginally outside of the recommendations of the BRE Guidelines (i.e., within 90% of the applied target value). A *slight* level of impact was stated in 18.5% of the assessed windows instances (i.e., where the impact is between 75%-90% of the recommendations made in the BRE Guidelines).

In the assessment that was carried out to determine the level of effect the proposed development would have on the sunlight (APSH) received by the surrounding windows, 25 No. of the 27 No. assessed windows were considered to be between *imperceptible* and *slight*. Whilst we acknowledge that there would be a significant level of effect to the sunlight received by two of the assessed windows, (the ground floor windows at the rear of No. 52 Drumcondra Road Lower), we feel that the level of effect demonstrated in the study as a whole is not sufficient grounds for refusal.

***Some Degree of Overshadowing Will Occur in Urban Environment – Principle Previously Accepted by An Bord Pleanála***

We note that An Bord Pleanála have previously accepted that some element of overshadowing in an urban context is inevitable. For example, in the Board's assessment of a hotel development at Nos. 9 – 17 Andrews Lane (ABP Ref. PL 29S 248844, DCC Reg. Ref. 4342/16), the Inspector noted the following:

*'Some increase in overshadowing would occur but it is accepted that the diminution relative to current conditions is relatively modest and can be accepted in a quality development at the location which is in need of regeneration at the centre of the city.'* [Our Emphasis].

Thus, in this case, an element of overshadowing was accepted by the Board.

***Recent Precedent of Dublin City Council and An Bord Pleanála Granting Permission for a Part 10 No. Storey Office Development Adjacent to Residential Units which Showed Some Daylight/Sunlight Impact***

We draw the Board's attention to a second scheme which proposed a 10 No. storey over basement office development at a site known as the 'Boston Sidings Site' at Grand Canal Quay and Macken Street, Dublin 2. Permission was granted by both Dublin City Council and An Bord Pleanála for the scheme under DCC Reg. Ref. 2808/19 [ABP Ref. PL29S.304878] with a Final Grant Date of 7<sup>th</sup> October 2019. The 4 No. storey 'Macken Flats' are located to the west of the Boston Sidings site. The Daylight/Sunlight Analysis submitted with the planning application notes that 12 No. of the 51 No. windows assessed in the Macken Flat units would be impacted as a result of the proposed development (in excess of 27% reduction of Vertical Sky Component). This was considered appropriate by Dublin City Council and An Bord Pleanála.



### ***An Bord Pleanála Inspector Recognised in Another Case at Malahide that Some Degree of Loss of Light is to Be Expected at Urban Locations***

In a recent assessment of the daylight and sunlight impacts of a scheme at Newtown, Malahide Road, Dublin 17 (ABP Ref. ABP-305943-19), the An Bord Pleanála Inspector stated the following:

*'A daylight and sunlight analysis has been submitted and I do acknowledge that there will be some negative impacts in terms of daylight/sunlight for existing residential development, most notably in the development to the south of the site. Whether this justifies refusing permission is a matter for the Board to determine, however it is my opinion that the proposed development would provide a substantial amount of residential accommodation at an accessible location at a density and height that is in keeping with national policy. It would provide a good standard of residential amenity for its occupants and would make a positive contribution to the character of the area. The submitted design achieves a reasonable setback from existing apartments, the proposed apartments are generally north of the existing ones, and so would have a lesser impact in terms of overshadowing. And so a balance needs to be achieved. I am of the opinion that impacts on daylight/sunlight are not so great as to warrant a refusal of permission in this instance.....I consider that impacts on privacy would not be so great as to warrant a refusal of permission. I have no information before me to believe that the proposal, if permitted would lead to devaluation of property in the vicinity. This is an urban location and some degree of overlooking/overshadowing/loss of light is to be anticipated at such locations.'* [Our Emphasis].

The Board decided to Grant Permission for the scheme in March 2020 and in their Order stated that the scheme 'would not seriously injure the residential or visual amenities of the area'.

### ***Summary – Subject Lands at Drumcondra are Eminently Suitable for Densification and Design Has Duly Considered Residential Amenity of Proximate Dwellings***

The Dublin City Council Planning Officer's Report suggests that:

*'An additional setback from St Alphonsus Avenue, or a reduction in height of the north block might usefully address the impacts on daylight and sunlight to some of the neighbouring properties'.*

We are advised that an additional setback along St. Alphonsus Avenue or a reduction in height of the block in this location will render the entire development unviable. The St. Vincent's Centre, a 3 No. storey building directly abuts the entire southern boundary of the subject site. As such it is not possible to develop this area of the site whilst also providing appropriate separation distance. The constraints of the subject site confine potential development to the northern and eastern boundaries which have frontage along St. Alphonsus Avenue and Drumcondra Road Lower respectively.

A substantial portion of the subject lands have the benefit of a permission that can still be implemented (DCC Reg. Ref. 3999/16); however, in our opinion the extant scheme does not maximise the potential of the site. The site is now a larger plot since the closure and acquisition of Quinn's pub, which allows a more cohesive development vision to be proposed at the corner site. Comparative images of the extant scheme and proposed scheme are provided below:

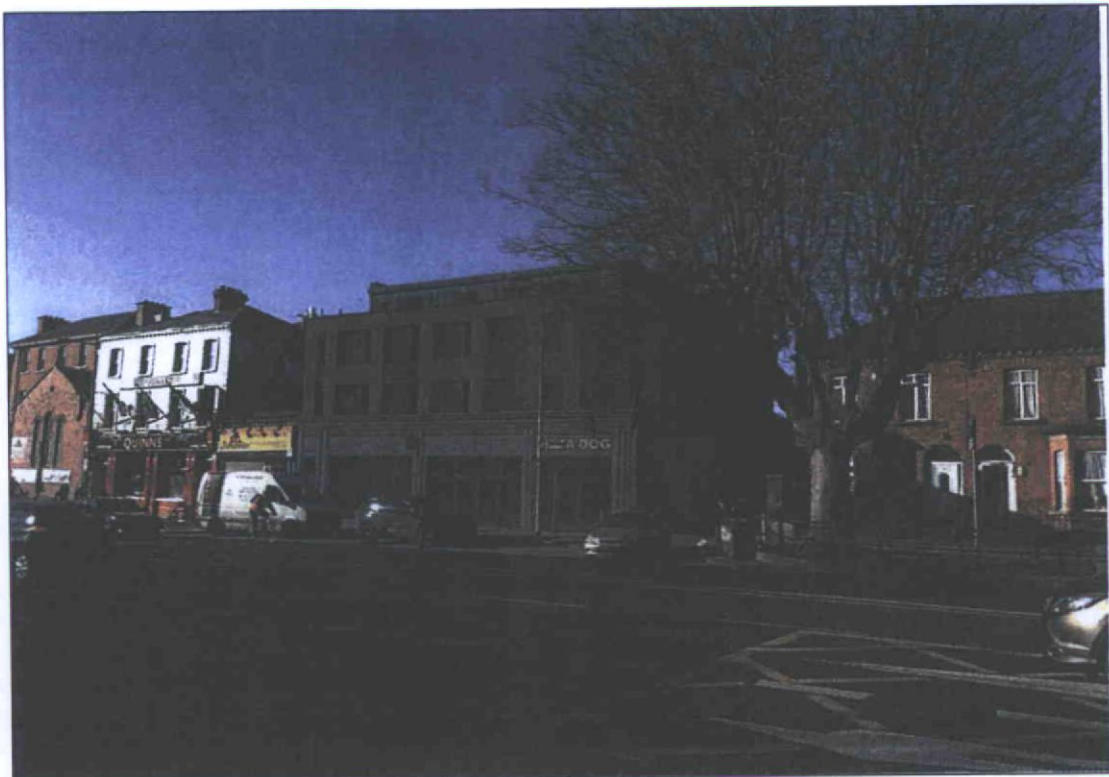


Figure 3.9: CGI of the Extant Scheme as Viewed from Drumcondra Road

Source: DCC Reg. Ref. 3999/16)



Figure 3.10: CGI of the Extant Scheme as Viewed from Drumcondra Road

Source: DCC Reg. Ref. 3999/16)





Figure 3.10: Verified View Montage of the Proposed Scheme as Viewed from Drumcondra Road

Source: 3D Design Bureau



Figure 3.11: Drawing Showing the Northern Elevation of the Extant Scheme along St. Alphonsus Avenue

Source: As abstracted from Dwg. No. 1609 P200 entitled 'Elevations & Section' as submitted with the RFI Stage drawings of DCC Reg. Ref. 3999/16



**Figure 3.12:** Verified View Montage of the Proposed Scheme as Viewed from St. Alphonsus Avenue

**Source:** 3D Design Bureau

**Key Point:** In summary, the subject site is a prime urban site which is ripe for densification. We must increase building heights in urban locations adjacent to high frequency public transport (circa 60 metres from the Drumcondra Rail Station) in order to ensure the delivery of compact growth in line with national policy. The subject development has been designed to ensure that its design and form fully respects the amenity of adjacent residential properties.

Owing to their Central and/or Accessible Location and the proximity to high frequency public transport, the subject lands are ideally suited to higher density development which can be achieved through the provision of increased building height. We submit that providing a lower building at the subject site would not result in the provision of efficient use of proximate infrastructure and services and would thus be contrary to the proper planning and sustainable development of the area.

***The Subject Site is Located in an Urban Area where National Planning Policy Actively Seeks Increased Heights thus a Degree of Change is Expected***

The subject site is an underutilised, vacant site that is capable of providing increased height in a sustainable location with capacity to absorb higher density development adjacent to services. Therefore, we submit that the proposal to provide of a part 2 No. to part 5 No. storey over partial basement mixed-use development containing 3 No. commercial units and 50 No. Build-to-Rent apartments is in accordance with National and Local Planning Policy whilst respecting the surrounding context of the site is fully in accordance with National policy.

National planning policy acknowledges that Ireland's classic development models for city and town cores has tended to be dominated by employment and retail uses, surrounded by extensive



and constantly expanding low-rise suburban residential areas which is now considered an unsustainable model. The *Building Height Guidelines, 2018* recognise that there is an opportunity for our cities and towns to be developed differently. The Guidelines are intended to set a new and more responsive policy and regulatory framework for planning the growth and development of cities and towns upwards rather than outwards.

The Design Team have been cognisant of the guidance set out in the *Building Height Guidelines, 2018* and have designed the proposed scheme accordingly. The *Building Height Guidelines, 2018* denote that the:

*'Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, **by building up and consolidating the development of our existing urban areas.**' [Our Emphasis].*

**Key Point:** The *Building Height Guidelines* also note that increasing prevailing building heights have a critical role to play in addressing the delivery of more compact growth in our urban areas, particularly our cities and large towns through enhancing both the scale and density of development and it notes that the planning process must actively address how this objective will be achieved. It must be accepted that the introduction of increased heights in traditionally low density areas will undeniably have an influence on the character of the area however a degree of change must also be expected. As such the *Building Height Guidelines* expressly seek increased building heights in urban locations:

*'In relation to the assessment of individual planning applications and appeals, it is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore **a presumption in favour of buildings of increased height** in our town/city cores and in other urban locations with good public transport accessibility.'* [Our Emphasis].

The proposed development is a direct response to national planning policy as outlined above, which actively seeks compact growth in urban centres through increased heights. An Bord Pleanála have previously shared our opinion of the changing nature of urban areas such as in their assessment of the St. Pauls College SHD in Raheny, where heights of 5 – 9 No. storeys were permitted by the Board (Reg. Ref.: 307444-20). The Inspector in their assessment of the scheme referred to:

*'Section 3 of the Height Guidelines refers to the Development Management Process. It is noted that 'building heights must be generally increased in appropriate urban locations'. In this respect **the continuation of low-rise development is not an option in this location, simply because the prevailing heights are two – five storeys.**' [Our Emphasis].*

Furthermore, the Inspector noted that:

*'Clearly the blocks will be seen at greater distances further away from the development and will read as a change to the skyline. However, I do not consider this to be a significant impact – **without doubt it will be a change to the skyline and a changed view** and this visual impact is addressed further in the EIA section below. I note that the Council request a reduction in the height of Blocks 1,3,5 and 6. However I do not consider this is necessary as I am of the opinion that there will not be a significant impact on the landscape or visual amenities as detailed further below.'*

*As detailed in the EIA section 13 below there will be significant changes to the view east from the nearby dwellings, but this has to be seen in the context of an urban environment which is constantly evolving.* [Our Emphasis].

Similarly, in the assessment of the Greenacres SHD scheme in Dundrum, the Inspector specifically referred to the changing nature of urban areas which are considered to be in transitional areas given the shift from traditional 2 No. storey dwelling houses to a variety of size and types of tenure. The Inspector noted in their assessment that the:

*'Existing residents will no doubt feel some loss of privacy and visual intrusion as a result of proposal against a backdrop of a largely undeveloped site – area is now developing into an increasingly suburban area - given its location in close proximity to Dublin City is in accordance with sustainable planning. Given distances involved, location, orientation of windows at angles as well as landscaping scheme consider development is in compliance with Development Plan standards. There is no undue loss of residential amenity to adjoining properties by way of overlooking, overshadowing or loss of light.'* [Our Emphasis].

Furthermore, the Inspector stated that:

*'From my site visit and a review of recent planning history in the wider area, it is clear that this area (Dundrum/Churchtown/Kilmacud/Goatstown) is in a transition and undergoing major change in its profile of development. As a result, its character is changing from a low density, two storey suburban area into a more urban area with a mix of different types of dwellings, including apartment blocks of varying heights and significantly increased densities. Recent grants of permission, as well as the extant permission on the subject site, are for apartment developments which are clearly at a higher density than the immediate surrounding housing estates of Holywell and Eden Park. Thus, the introduction of apartment dwellings at this location, while introducing a new development type to the immediate vicinity, can be seen as part of the transition of this wider area.'* [Our Emphasis].

**Key Point:** We respectfully request An Bord Pleanála to Grant Permission for the scheme subject of this First Party Appeal having regard to recent An Bord Pleanála decisions regarding the need to allow urban environments to evolve in line with current national planning policy which actively seeks increased heights in urban areas.



### ***Any Development of the Vacant Subject Lands Would Represent a Difference in Scale***

It is our opinion that there will be a difference of scale between the low-density existing dwellings along St. Alphonsus Avenue and Drumcondra Road Lower and any future form of development that is ultimately provided on this vacant site. That is because the planning system requires Applicants to respond and respect National and Regional level policy which dictates that infill/brownfield sites within the existing built-up areas of Dublin City and suburbs are consolidated and subject to intensification to provide high density and people intensive uses. Ultimately the challenge is to ensure that where such transitions are provided, that the residential amenity of existing dwellings in the area is protected. Whilst the subject scheme will result in a visual transition, such a transition should be expected. With a changed planning policy context favouring increased height and density in central and/or accessible areas such as the subject site, the reality is that the future of Dublin will contain a mix of the low-density developments of the past, interspersed with more modern higher density developments.

**Key Point:** We note that there are many Strategic Housing Developments of such height and scale that have been granted permission by the Board demonstrating the acceptability of such 'traditional low density' and 'new higher density' relationships in urban contexts. The Design Team acknowledge that the proposed scheme will introduce increased heights in a primarily low-density area however it must be recognised that a degree of change needs to be expected in urban areas as a result of national, regional, and local planning policy. The scheme is part five storeys at its maximum height and thus is still low-rise.

There are plentiful examples of schemes permitted by An Bord Pleanála where increased heights have been introduced adjacent to 2 No. storey dwelling houses. For instance, we refer to a recent Strategic Housing Development permitted at Howth Road (under Reg. Ref.: ABP-360102-19) where the Inspector in their assessment of the 8 No. storey scheme noted that:

*'The current site is formerly industrial and commercial land beside a railway station and town centre. **The detached houses in its vicinity do not form a sustainable pattern of development that should be replicated on the site.** The site is near the open expanse of the sea. Its ground level is below that of the scenic hill on its other side. The detailed design of the buildings achieves a high standard. The layout of the development would provide a strong frontage to a major street into the town centre.....**While it would change the character of the area, this change would be positive and would be in keeping with national and regional planning policy.**' [Our Emphasis].*

It is our opinion that the assessment by the Inspector in the aforementioned scheme is applicable to the site subject to First Party Appeal. It should be noted that this stance on introducing heights into traditionally low-density areas is not an isolated case and can be seen in many recent decisions. We refer to a scheme that was recently granted permission by An Bord Pleanála at the Former Bailey Gibson Site, Nos. 326-328 South Circular Road, Dublin 8 (under ABP Ref.: PL29S.307221) which comprises 412 No. apartments and 4 No. townhouses over 3-16 No. storeys.

The Inspector in their assessment noted that:

*'The wider area is in general characterised by two-storey terraced dwellings dating from the late 19th/early 20th century together with blocks of public housing and neighbourhood*



*shops and community facilities such as St. Catherine's School and St. Catherine's Church located on Donore Avenue to the east of the site.'*

The Inspector was of the opinion that the application would 'constitute a gross overdevelopment of the site' and recommended that the application be refused for reasons relating to scale, height, bulk, mass of the development and impact on the neighbouring residential areas. The Board however did not accept the Inspector's recommendation to refuse the 3 – 16 No. storey scheme as they were of the opinion that:

*'... the proposed development would not have significant adverse landscape and visual impacts arising from either the number, form, bulk, scale or height of the proposed blocks and did not consider that the proposed development would have an overbearing impact on surrounding area, including the Residential Conservation Areas. In coming to this conclusion, the Board considered that the design, while incorporating height greater than that of the surrounding area and heretofore existing pattern and scale of development...'. [Our Emphasis].*

**Key Point:** Whilst both the Bailey Gibson and Howth Road SHD schemes proposed heights significantly greater than that proposed at the subject scheme, it is evident that An Bord Pleanála accept that future development is capable of introducing increased height in areas that would previously have been dominated by low density housing without being considered overdevelopment.

#### **Precedent of Dublin City Council and An Bord Pleanála Granting Permission for a Part 7 No. Storey Aparthotel Adjacent to Two and Three Storey Structures**

While the height of the proposed residential scheme in Drumcondra is greater than the adjacent low-rise dwellings, we submit that the low rise dwellings should not be dictating the future form of development in the area, particularly having regard to the central urban location of the site and its proximity to public transport infrastructure.

We note that the issue was recently considered by Dublin City Council and An Bord Pleanála on Appeal in the assessment of a part 7 No. storey aparthotel development on lands bounded by Little Mary Street, Little Green Street and Anglesea Row in Dublin 1 (DCC Reg. Ref. 3629/17, ABP Ref. PL29S.300987). In responding to the concerns of the Third Parties relating to the height and scale of the development, we note that the Dublin City Council Planning Officer in considering the appropriateness of the development adjacent to low rise structures in Dublin City noted the following in their Report:

*'The existing immediate context in the area is of predominantly two and three storey buildings of varying architectural quality. The extant building fabric of the area whilst predominantly of C19th character reflects the scale and grain of the earlier C18th building stock and may be considered to be a unique urban morphology comprising of a collection of warehouse/market buildings and sites which have been layered and re-made overtime. **Notwithstanding this however the low-rise two and three-storey buildings which immediately adjoin the site to the west and south cannot realistically pre-determine the building height for the application site, a regeneration opportunity within the city centre and in close proximity to a strategic transport hub and high-quality public transport facilities'**. [Our Emphasis].*



The Board granted permission for the above-described aparthotel development on 12<sup>th</sup> November 2018 and therefore similarly concurred that the proposed part 7 No. storey height was appropriate adjacent to low rise buildings.

**Key Point:** We consider that the same principles apply to the subject site at Drumcondra – there is a clear opportunity to densify this large underutilised urban site in close proximity to excellent public transport and the existing dwellings in proximity to this site can no longer reasonably command the form of future development at the subject site as long as the scheme ensures that the residential amenity of the dwellings will not be adversely affected by the proposal.

### 3.4 Reason for Refusal No. 3 – Built Form and Historic Character of the Area

The third Reason for Refusal states that:

*'Having regard to the location of the site, to the established built form and historic character of the area, and to the existing buildings on the site, it is considered that the proposed development would be incongruous in terms of its design, and by reason of its excessive height, bulk and mass, would be out of character with the streetscape. Additionally, the proposal to demolish Quinn's (no 42-44) and the adjoining building (no 46 Lower Drumcondra Road) and the retained shopfronts of the other previously demolished buildings would be contrary to Policy CHC1 of the Dublin City Development Plan 2016-22, To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city and contrary to Section 16.10.17, which states that the planning authority will actively seek the retention and re-use of buildings/ structures of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city.'*

#### 3.4.1 Response to Reason for Refusal No. 3:

A detailed Response to this item has been prepared by Rob Goodbody, Historic Buildings Consultant and is provided below:



## HISTORIC BUILDING CONSULTANTS

OLD BAWN  
OLD CONNAUGHT  
BRAY

phone: 01 282 3508

rob.goodbody@historicbuildingconsultants.ie

**Re: 42-44, 46, 48, 48B, 50 and 50A Drumcondra Road lower, Dublin 9**

**Planning authority reference: 2187/21**

I refer to the above planning application in relation to which a decision to refuse planning permission was issued by Dublin City Council on 1<sup>st</sup> April 2021. This report forms part of the documentation to be submitted as a first-party appeal to be made on behalf of the applicants, Discipulo Developments Limited and it relates to the conservation elements of the decision.

The third reason for refusal of permission reads as follows:

3. Having regard to the location of the site, to the established built form and historic character of the area, and to the existing buildings on the site, it is considered that the proposed development would be incongruous in terms of its design, and by reason of its excessive height, bulk and mass, would be out of character with the streetscape. Additionally, the proposal to demolish Quinn's (no 42-44) and the adjoining building (no 46 Lower Drumcondra Road) and the retained shopfronts of the other previously demolished buildings would be contrary to Policy CHC1 of the Dublin City Development Plan 2016-22, To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city and contrary to Section 16.10.17, which states that the planning authority will actively seek the retention and re-use of buildings/ structures of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city.

This reason is based on a flawed policy in the development plan. Section 51(1) of the Planning and Development Act 2000, as amended, states that:

For the purpose of protecting structures, or parts of structures, which form part of the architectural heritage and which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, every development plan shall include a record of protected structures, and shall include in that record every structure which is, in the opinion of the planning authority, of such interest within its functional area.

Note the word "shall", which imposes an obligation on the planning authority. It is abundantly clear from this that if the planning authority believes a building to be of heritage interest it has a legal obligation to place it on the record of protected structures. Section 16.10.17 of the development plan purports to give powers to the planning authority that contravene section 51(1) of the planning act and hence it is an unlawful provision of the development plan.

Rob Goodbody BA(mod), DipEP, DipABRC, MA, MUBC, MIPI



A fundamental basis for the entire system of development plans is that a development plan forms a contract between the planning authority and the people – whether they be residents, business owners or others. And arising from that it is a core principle that the development plan brings certainty. In cases such as the present planning application, a purchaser of a property can look at the development plan to determine whether any building within the property is a protected structure and can make a decision with that full knowledge. The concept of a planning authority making an arbitrary decision to behave as if a building is protected, as in this instance, flies in the face of the democratic nature of the development plan. No development plan can contain a policy that overrides a provision of the planning act.

The contention raised in the Conservation Officer's report that the inclusion of the building in the National Inventory of Architectural Heritage (NIAH) makes some kind of difference is a red herring and is a flawed argument for a number of reasons:

1. The NIAH survey had not been published at the time that the planning application was made, let alone when the applicant purchased the property, and to invoke it at this stage is tantamount to moving the goal posts.
2. The NIAH is not a democratic instrument in the way that a development plan is. If a building is to be added to the record of protected structures the owners and occupiers must be given an opportunity to raise an objection. This is not the case with the NIAH.
3. The decision to include a building on the record of protected structures is a reserved function of a planning authority, while section 16.10.17 of the development plan would have the effect of delegating that power to the City Manager, which is a delegation that has no legal basis.
4. If the planning authority believes that any part of the present application site is of such significance that it must be retained, why has it never been added to the record of protected structures? It is now more than fifty-five years since the 1963 Planning Act gave planning authorities the right to list buildings for preservation and it is more than twenty-one years since this system was upgraded by the Local Government (Planning and Development) Act, 1999. This is more than enough time to have considered whether these buildings should be protected.
5. The NIAH cannot be used as a basis for this decision. Dublin City Council has employed Conservation Officers that are Grade 1 Conservation Architects for more than twenty years and they are more highly qualified than the staff who carry out the NIAH surveys, so if the buildings in Drumcondra Road are of such merit that they must be protected, why has this not been done? The NIAH survey is taken from the street, without full access to the buildings and hence no special knowledge was available to the NIAH staff that has not been available to Dublin City Council's own staff for more than half a century. It might also be added that the NIAH survey is based on poor information and puts the date 1880 on the construction of the building, which is thirty years earlier than the actual construction date.

As was shown in the architectural heritage impact assessment that was submitted with the planning application, the interior of the former Quinn's licensed premises has no redeeming features that would suggest that it should be protected. The fittings in the bar at the front of the premises are of late date and are not traditional pub fittings, while the rear section is all the result of later additions and have no architectural heritage merit whatsoever.

It was also indicated in the architectural heritage impact assessment that Dublin City Council has granted planning permission for the demolition of other licensed premises that were older than Quinn's and more prominently sited. Examples were given of Howl at the Moon in Mount Street Lower (planning authority reference 3513/18) and Kiely's in Donnybrook, permission for the demolition of which was granted by Dublin City Council and is currently on appeal (planning authority reference 3301/20).

In summary, the third reason for refusal is unlawful and flawed and it also fails to take into account a full survey of the building on which any proper assessment of its merits should be based.

Rob Goodbody  
26<sup>th</sup> April 2021



***Cultural and Social Interest of No Relevance to the Decision – the Pub Has Ceased Trading Due to a Lack of Viability and Will Not Resume Trading***

In relation to the proposed demolition of the former Quinn's Pub (Nos. 42-44 Drumcondra Road Lower), the Dublin City Council Conservation Officer's Report noted that:

*'I would argue that as well as retaining social interest, Quinns would also be considered to be of cultural interest, as it has, until recent years, remained in active pub use since its construction in the 19thC. Moreover, I would consider that the building should be considered to be of significance due to its importance to GAA sports fans across the country who would have used Quinns as a landmark and a meeting point prior to and following national GAA matches at the nearby Croke Park'. [Our Emphasis]*

The Conservation Officer of Dublin City Council appears to infer that part of the rationale for the retention of the former Quinn's pub building is based upon its particular significance to GAA Sports fans. In our opinion it is regrettable that, in the midst of a national housing crisis, a representative of one of the largest Planning Authorities in the Country appears to consider providing a meeting point for sports fans before and after matches to be a greater priority than a development containing residential units which could potentially contribute towards addressing the housing crisis.

Quinn's pub has a long and troubled financial history. In 2011, the Irish Banking Resolution Corporation took control of the premises as part of the seizure of assets belonging to the then owners. The pub closed for a short while, before re-opening under new management.

Innkeepers were appointed in July 2015 by Quinn International Property Management Limited to provide management services in respect of a number of pubs, including Quinns (No. 42-44 Drumcondra Road Lower). In a letter dated 19<sup>th</sup> April 2021 (a copy of which is enclosed as Appendix A to this Appeal), Innkeepers have outlined how the former Quinn's pub was not a viable business in the area. The pub was described in a progress report by Innkeepers as a dysfunctional business. The enclosed letter presents a dismal picture of the trading performance of the pub, noting that whilst on a handful of occasions during the GAA season there could be 1,500 No. patrons on match days, on regular days during the remainder of the year sales averaged just €570 with no more than 25 – 30 No. patrons on a busy night.

Innkeepers note that when they were first appointed, the building was in generally poor condition with inadequate water and sewage infrastructure to cope with the busy match days and significant maintenance required to the roof. In a progress report dated April 2016, Innkeepers noted that:

*'Having reviewed recent trading history of the premises and tested the local market with a number of events last Autumn, we are satisfied there is insufficient quality business in this location to operate a regular lounge/late bar. We see little point in spending on bar extensions and entertainment to attract low quality business and resulting insurance/reputational issues.'*

The pub ultimately closed its doors for good sixteen months ago in January 2020.

It is apparent that the former Quinn's pub was not a viable business model at the subject site. The pub may have given the illusion of a successful business owing to the match day crowds,



however it is evident that the local community did not support the business and as a result it ultimately failed.

***An Bord Pleanála Has Previously Granted Permission for the Demolition of Buildings That Are on the NIAH***

As detailed in the response prepare by Rob Goodbody above, at the time of lodgement of the subject application the NIAH for Dublin City had not yet been published and thus the Design Team were unaware of the status being attributed to the building. Similarly, despite 2 No. separate pre-planning meetings being undertaken in respect of the proposal, the Planning Officer of Dublin City Council did not raise any concerns in respect of the proposed demolition of the buildings or the contents of the Architectural Heritage Impact Assessment which was provided as part of the pre-planning pack.

We note the inaccuracies of the NIAH survey in respect of the Quinn's building, particularly that it puts the date of the building as 1880, which is 30 years earlier than its actual construction. We further note that Dublin City Council have to-date not deemed the building worthy of being added to the Record of Protected Structures.

We further note that An Bord Pleanála has previously Granted Permission for NIAH structures to be demolished. One example which is familiar to this office is the case of 'Aisling, 4 Strand Road, Sutton, Dublin' (ABP. Ref. PLo6F.308229).

Section 7.3.2 of the Inspector's Report in the assessment of the application at 'Aisling' describes the building:

*'I note that the dwelling is **not a Protected Structure** and is not located within an Architectural Conservation Area. It is **listed in the National Inventory of Architectural Heritage (NIAH) with a 'regional' rating**, wherein it is described as follows: 'Detached International style six-bay two-storey house, 1936, with flat roof, balcony and projecting end bay. Flanked by single storey garages'. [Our Emphasis].*

The Inspector is assessing the proposed demolition of the dwelling (and its replacement with a multi-unit residential development) stated the following in Section 7.3.5 of their Report:

*'Having inspected the site I can confirm that the structure in in poor repair, with windows boarded / damaged and evidence of external render damage. **While the dwelling is certainly distinct and prominent, I consider that it lacks the appropriate level of architectural interest to require protection.** Therefore, consistent with the previous position of the Board, I have no objection in principle to its demolition.'* [Our Emphasis].

**Key Point:** The Board agreed Inspector's opinion regarding the demolition of the building and ultimately Granted Permission in December 2020 for the development including the demolition of the structure listed to be of 'regional' importance on the NIAH survey of Fingal County Council.

***Architectural Heritage Impact Assessment Submitted with Application Refers to Other Precedent Cases of Demolishing Public Houses***

We refer the Board to the *Architectural Heritage Impact Assessment* submitted with the application which refers to precedent cases of more significant public house buildings which have



been granted permission to be demolished – including Kiely's of Donnybrook and the Howl at the Moon in Mount Street.

With regard to the Howl of the Moon premises the *Architectural Heritage Impact Assessment* stated:

*'Howl at the Moon on Mount Street Lower was a three-storey, six-bay building with a rendered façade, located on a corner site and projecting out into Mount Street. A decision to grant planning permission for its demolition was issued by Dublin City Council, but overturned on appeal (Dublin City Council reference 2614/17). A decision to grant was also issued for a revised proposal by the City Council and in this case it was confirmed on appeal (Dublin City Council reference 3513/18). It is notable that in that case the building was Georgian in origin and was on a very prominent site, being directly ahead on the approach into the city and projecting out into the street. It was also in an area that is zoned Z8, which is the Georgian Core of the city and hence of high significance for architectural heritage. By comparison, Quinn's, 44 Drumcondra Road Lower, is a far less significant building in terms of its design, its siting and the conservation significance of the area.'* [Our Emphasis].



Figure 3.13: Image of Howl at the Moon Prior to its Redevelopment

Source: 'View 2 Existing' Photomontages Prepared by Magnaparte – Reg. Ref. 3513/18)



Figure 3.14: Image of Development Permitted at Howl of the Moon Site

Source: 'View 2 Proposed' Photomontages Prepared by Magnaparte – Reg. Ref. 3513/18)

We have reviewed the An Bord Pleanála assessment of that application (DCC. Reg. Reg. 3513/18, ABP Ref. ABP-302688-18) and note that the Planning Inspector ultimately recommended that planning permission be refused for the development for the following reason:

*'Having regard to the **prominent location of the site**, to the established built form and historic character of the area, and to the **existing building on the site, which is considered to be of importance to the streetscape**, it is considered that the proposed development would be incongruous in terms of its design, and by reason of its **excessive height, bulk and mass** would be out of character with the streetscape, and **would adversely affect the setting of nearby Protected Structures**. The design is not considered to justify the **demolition of the existing structure on the site**. The proposed development would seriously injure the visual amenities of the area, would be contrary to the stated policy of the planning authority as set out in the Dublin City Development Plan 2016-2022, in relation to conservation and design, and would, therefore, be contrary to the proper planning and sustainable development of the area.'* [Our Emphasis].

However, the Board decided not to accept the recommendation of the Inspector and granted permission for the scheme. The Board, in their Order state:

*'In deciding not to accept the Inspector's recommendation to refuse permission, the Board agreed with Dublin City Council, that the proposed structure constituted an innovative contemporary building which will integrate comfortably within the streetscape. In this context, it is considered that the proposed development addresses and resolves the expressed concern under previous application planning register reference number 2614/17 (An Bord Pleanála reference number PL 29S.248729), wherein the Board determined that the scheme in that instance did not justify the demolition of the existing*



structure on the site. In forming this opinion, the Board also noted the detail within the planning application documentation regarding the significant loss of original fabric and that **given that the existing building is not a protected structure, its demolition and replacement with a modern building of high-quality design is warranted.** [Our Emphasis].

**Key Point:** In our opinion, the proposed demolition of Quinn's pub is warranted as it is not a Protected Structure, and it will be replaced with a modern building of high-quality design and greater density.

#### 4.0 CONCLUSION

The proposed development at Drumcondra Road Lower was refused permission by Dublin City Council for reasons relating to the provision of appropriate residential amenity, potential impacts on neighbouring properties and the built form and historic character of the surrounding context.

In our opinion, the Planning Authority in making this decision has allowed existing low-density houses to dictate the form of development to be provided on the adjacent site and such a decision is contrary to the principles of proper planning and sustainable development. The national and regional and policy narrative clearly outlines the responsibility on all parties to the Planning process to secure the appropriate densification of central and/or accessible lands such as the subject site.

The Board acknowledged in previous decisions (as outlined throughout this Appeal) that views from low density developments must change, specifically that *'the continuation of low-rise development is not an option'* (St. Pauls SHD) and whilst *'Existing residents will no doubt feel some loss of privacy and visual intrusion as a result of proposal against a backdrop of a largely undeveloped site – area is now developing into an increasingly suburban area.'* (Green Acres SHD).

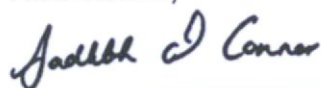
Ultimately, in our opinion the subject scheme has provided an architecturally interesting and innovative design response to this vacant site that will provide much needed homes in a sustainable location. We submit that the scheme is appropriately scaled for the opportunity the site presents and will contribute positively towards addressing the ongoing national housing crisis.

It is submitted that the proposed development is fully in accordance with the proper planning and sustainable development of the area for the reasons set out in the Grounds of Appeal.

We request that the Board overturns the decision of Dublin City Council and grants permission for the proposed mixed-use development comprising 3 No. commercial units and 50 No. residential units.

We look forward to receiving an acknowledgement of this Appeal in due course.

Yours Sincerely




---

Sadhbh O'Connor

Director

Thornton O'Connor Town Planning