

**Statement of Material Contravention with  
the Dublin City Development Plan 2016-2022**

*In respect of*

**Proposed Shared Living Accommodation and  
Neighbourhood Uses**

*at*

**36-40 Dominick Street Upper,  
Dublin 7**

*Prepared by*

**John Spain Associates**

*On behalf of*

**Western Way Developments Ltd**

**December 2020**



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## 1.0 INTRODUCTION

- 1.1. This statement outlines the justification for the proposed redevelopment of nos. 36-40 Dominick Street Upper, including retention of the Hendrons Building to accommodate a shared living development and neighbourhood uses. It should be noted that the proposed development ranges in height from 4 to 9 no. storeys. This statement provides a justification for a potential material contravention of the Dublin City Development Plan 2016-2022 in relation to building height.
- 1.2. It is noted that it is ultimately a matter for An Bord Pleanála to determine as to whether the proposed development constitutes a material contravention of the Dublin City Development Plan 2016-2022 and, whether it is appropriate to grant permission for the proposed development by reference to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).
- 1.3. Section 9 of the Planning and Development (Housing) and Residential Tenancies Act, 2016, confers power on An Bord Pleanála to grant permission for a development which is considered to materially contravene a Development Plan, other than in relation to the zoning of land, is as follows:

*'(6) (a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under Section 4 even where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned.*

*(b) The Board shall not grant permission under paragraph (a) where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of land.*

*(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if Section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development'.*

- 1.4. Section 37(2)(b) of the Planning and Development Act 2000 states:

*'2) (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*

*(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that –*

*(i) the proposed development is of strategic or national importance,*

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

*(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority*

*in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan’.*

- 1.5. In the event that the Board were to grant permission, the Board’s “reasons and considerations” would have to reference the matters under Section 37 (2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the Development Plan. It is apparent from section 10 (1)(3)(b) of the SHD Act that such reasons and considerations must appear in the Board decision itself. Section 10 (3) provides as follows:

*“(3) A decision of the Board to grant a permission under 9 (4) shall state- ....*

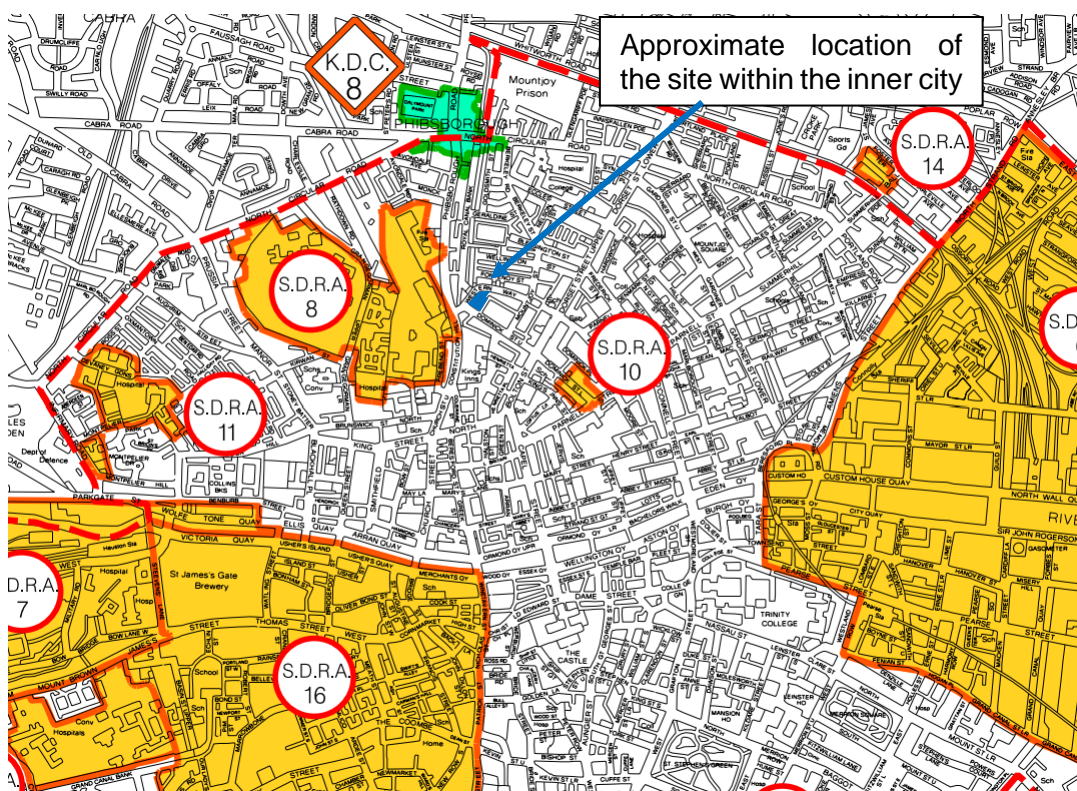
*(b) where the Board grants a permission in accordance with section 9(6)(a), **the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be**” (our emphasis)*

- 1.6. It is submitted that recent national planning policy, as set out in the Statement of Consistency, provides for increased building heights on appropriately zoned and serviced lands adjacent to high quality public transport.
- 1.7. Having regard to the analysis set out below of the compliance with the proposed development with national planning policy and guidelines and having considered the pattern of development, it is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the County Development Plan, by reference to sub-paragraphs (i) and (iii) of Section 37(2)(b) for the reasons set out below.

## 2.0 JUSTIFICATION OF BUILDING HEIGHT PROPOSED

- 2.1. Section 16.7.2 sets out the height requirements of the Dublin City Development Plan 2016-2022 (the CDP). Figures 1 and 2 below indicate the height requirements specific to the site, being 'up to 24m' for residential development. Block C within the subject proposal reaches a maximum height of 26.825m, approximately 2.82m above the requirement. All other buildings proposed (Blocks A, B, D and E) are within the height limit.

**Figure 1 – Extract from Map K of the CDP showing the location of the site within the inner city)**



**Figure 2 - Building height requirements applying to the subject site**

Category	Area	Height (m)
<b>Low-rise</b> (relates to the prevailing local height and context)	Inner City	Up to 28 (commercial)
		Up to 24m (residential)

- 2.2. The Board may consider that the proposed development materially contravenes Section 16.7.2 of the County Development Plan. A justification is set out as follows in this regard.

- 2.3. An Architectural Design Statement prepared by John Fleming Architects sets out in detail the development of the massing and design of the proposed development. A Townscape and Visual Impact Assessment has been prepared by Kennett Consulting and Photomontages and verified views prepared by Digital Dimensions illustrate the full visual extent of the proposed scheme from a selection of positions nearby. Each projected view is accompanied by a commentary on the perceived visual impact of the development. The impact assessment range is from none to moderate to significant.
- 2.4. Elements of the proposed development are up to 2.82m higher than provided for in the CDP in relation to site. However, An Bord Pleanála may still grant planning permission for the proposed development, should it consider that a material contravention of the County Development Plan arises.
- 2.5. It is considered that permission for the proposed development should be granted having regard to national and regional planning guidelines for the area, Ministerial Guidelines under section 28 and policy directives as outlined in the following justification.
- 2.6. Section 37(2)(b) of the Act sets out four distinct criteria which allows the Board to materially contravene a development plan. This statement of material contravention addresses each of the items and it is our considered opinion that the current proposal satisfies the criteria as follows:

***(i) the proposed development is of strategic or national importance,***

- 2.7. **Response:** It should be noted that the proposed development only needs to fulfil one of the criteria above i.e. it must be “strategic” or “national” importance. The proposed development falls within the definition of “*strategic housing development*” in accordance with the definition of same provided under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. Strategic housing development also comes within the definition of “*strategic infrastructure development*”. On this basis also, it is submitted that the proposed development is, by definition, of strategic importance.
- 2.8. The full title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:
- 2.9. ***“An Act to facilitate the implementation of the document entitled “Rebuilding Ireland – Action Plan for Housing and Homelessness” that was published by the Government on 19 July 2016, and for that and other purposes to amend the Planning and Development Acts 2000 to 2015, the Residential Tenancies Acts 2004 to 2015 and the Housing Finance Agency Act 1981, to amend the Local Government Act 1998 in relation to the Local Government Fund and to provide for connected matters.”***
- 2.10. The Rebuilding Ireland Action Plan, and consequently the 2016 Act, recognise the strategic importance of larger residential developments in addressing the ongoing housing and homelessness crisis.

***(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or***

**Response:** This is not relevant to the proposed statement.

***(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or***

2.11. The following section shall demonstrate how the proposed height and quantum of development is justified in the context of recent National Planning Policy and Ministerial Guidelines under section 28 of the 2000 Act, which seek to increase residential densities on zoned services lands adjacent to public transport corridors. These include:

- Project Ireland: National Planning Framework 2040:
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018):

### **National Planning Framework (NPF) 2040**

2.12. The National Planning Framework is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040.

2.13. As a strategic development framework, Ireland 2040 sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.

2.14. National investment planning, the sectoral investment and policy frameworks of departments, agencies and the local government process will be guided by these strategic outcomes in relation to the practical implementation of Ireland 2040. The NPF sets out the importance of development within existing urban areas by *"making better use of under-utilised land including 'infill' and 'brownfield' and publicly owned sites together with higher housing and job densities, better services by existing facilities and public transport"*.

2.15. Objective 3a of the NPF states that it is a national policy objective to *"deliver at least 40% of all new homes nationally within the built-up envelope of existing urban settlements"*.

2.16. Objective 4 states *"ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well being"*.

2.17. Objective 11 of the National Planning Framework states that *"there will be a presumption in favour of development that encourages more people, jobs and activity within existing urban areas, subject to development meeting appropriate planning standards and achieving targeted growth"*.

2.18. The NPF continues to state that:

*"Although sometimes necessary to safeguard against poor quality design, planning standards should be flexibly applied in response to well-designed development proposals that can achieve urban infill and brownfield development objectives in settlements of all sizes."*

*This is in recognition of the fact that many current urban planning standards were devised for application to greenfield development sites and struggle to take account of evolved layers of complexity in existing built-up areas.*

*In particular, general restriction on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance based criteria appropriate to general locations e.g. city/ town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc”.*

2.19. Objective 13 of the National Planning Framework also states that:

*“In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria enabling alternative solutions that seek to achieve well-designed high quality and safe outcomes in order to achieved targeted growth and that protect the environment”.*

2.20. The NPF also states that that: *“to avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas”.*

2.21. Objective 35 states that it is an objective to: *“increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site based regeneration and increased building heights”.*

2.22. **Response:** The proposed development is located within 100m of Broadstone Luas stop, within walking distance of several major employment hubs including Grangegorman DUT Campus (300m), the Mater public and private (800m) and the legal precinct at the Four Courts (1km). Further, the site is also within close proximity (walking distance) of several major employment centres as follows:

**Figure 3 - Large Employment Hubs in proximity to the site**

Employment Hub	Approx. No. of Employees	Distance	Mode of Transport
Technological University Dublin	3,000	300m	Walk
The Mater Public Hospital	3,000	800m	Walk
Rotunda Hospital	1,000	700m	Walk
The Four Courts (legal precinct)	c. 5,000	1km	Walk
Trinity College Dublin	4,000	1.3km	Luas/bus
IFSC	40,000	1.5km	Luas

2.23. In addition, the site is served by several high-frequency bus routes leading to the city and centre and suburbs. The existing site is underutilised and presents an opportunity site for development, meeting the criteria identified in the NPF and providing for redevelopment for a residential scheme.

2.24. The scheme includes a variety of building heights stepping from 4 storeys at the eastern boundary of the site (cognisant of the adjoining built form) to 9 storeys at the western boundary and corner of the site. The building rises to a maximum height of 9 no. storeys at the corner of Western Way and Dominick Street, reflective of this prominent corner, creating strong urban edge to the street. The proposed density and

height of the development is considered appropriate for the location of the site and the availability of public transport facilities. The proposed development is therefore in accordance with the objectives of the NPF in this regard.

- 2.25. The proposed development will provide for a high-quality residential accommodation scheme, including neighbourhood uses, in a range of room sizes and layouts including communal internal and external spaces. The proposed materials and finishes will also be of a high-quality standard (including white brick and glazed finishes) in order to complement the existing Hendrons building on the site, whilst creating a unique quality urban place.
- 2.26. It is considered that the proposed development provides for the creation of an attractive, sustainable residential development within an existing built up urban area, on a brownfield site. The provision of the new sustainable development is therefore consistent with the NPF objectives.
- 2.27. Compliance with the National Planning Framework therefore provides an appropriate justification for granting permission for a higher building (c. 2.82m above the height requirement) in this location as a material contravention of the CDP. This is further reinforced by the Urban Development and Building Height Guidelines below.
- 2.28. Restricting the height of the development at such a location, well served by public transport and adjacent to several major employment hubs to that set out under the CDP building height objectives would be a contravention of Government policy which promotes increased densities at well served urban sites.

#### **Urban Development and Building Height Guidelines 2018**

- 2.29. The Urban Development and Building Height Guidelines ('Guidelines') set out national planning policy guidelines on building heights in urban areas in response to specific policy objectives set out in the National Planning Framework and Project Ireland 2040 and draft Regional Spatial and Economic Strategy.
- 2.30. The Guidelines in effect seek denser development at public transport nodes. The Guidelines state that it is Government policy to promote increased building height in locations with good public transport services.
- 2.31. The Guidelines emphasise the policies of the NPF to greatly increase levels of residential development in urban centres and significantly increase building heights and overall density and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level.
- 2.32. Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and comply with any applicable specific planning policy requirements (SPPR's) of the guidelines in carrying out their function.
- 2.33. Section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 provides as follows:

*"(3)(a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.*



*(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, **then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.***

*(c) In this subsection “specific planning policy requirements” means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.”<sup>1</sup>*

- 2.34. In relation to redevelopment and enhancement of the city core, the guidelines state that *“to meet the needs of a growing population without growing out urban areas outwards requires more focus in planning policy and implementation terms on reusing previously developed “brownfield” land, building up urban infill sites (which may not have been built on before) and either reusing or redeveloping existing sites and buildings that may not be in the optimal usage or format taking into account contemporary and future requirements”.*

- 2.35. The proposed development is located adjacent to high-frequency public transport, in walking distance of employment centres, services and amenities and therefore presents an opportunity to provide for increased building heights and densities at this location. Section 3.1 of the Urban Development and Building Heights Guidelines 2018 refers to the development management principles to be applied:

*“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. Planning authorities must apply the following broad principles in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines:*

*Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?*

*Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?*

*Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?”*

- 2.36. SPPR3 of the Urban Development and Building Heights Guidelines 2018 requires applicants for planning permission to set out how the proposal complies with the *“criteria above”*. This refers to the Development Management criteria at Section 3.2 of the Guidelines, which are discussed in turn below.

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<sup>1</sup> Emphasis added.

- 2.37. If the Board is satisfied that the criteria under section 3.2 have been met, it “*may approve such a development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise*”. The paragraph introducing SPPR 3 and SPPR 3 itself are set out below for ease of reference:

*“Where the relevant planning authority or An Bord Pleanála considers that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply the following Strategic Planning Policy Requirement under Section 28 (1C) of the Planning and Development Act 2000 (as amended).”*

### **SPPR 3**

***It is a specific planning policy requirement that where;***

- (A) 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and  
2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;***

***then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.***

- (B) In the case of an adopted planning scheme the Development Agency in conjunction with the relevant planning authority ( where different) shall, upon the coming into force of these guidelines, undertake a review of the planning scheme, utilising the relevant mechanisms as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme***
- (C) In respect of planning schemes approved after the coming into force of these guidelines these are not required to be reviewed.***

- 2.38. The following section demonstrates how the proposal complies with the relevant criteria as referred to in SPPR 3 above. Each of the criteria (denoted by italics) are considered in turn:

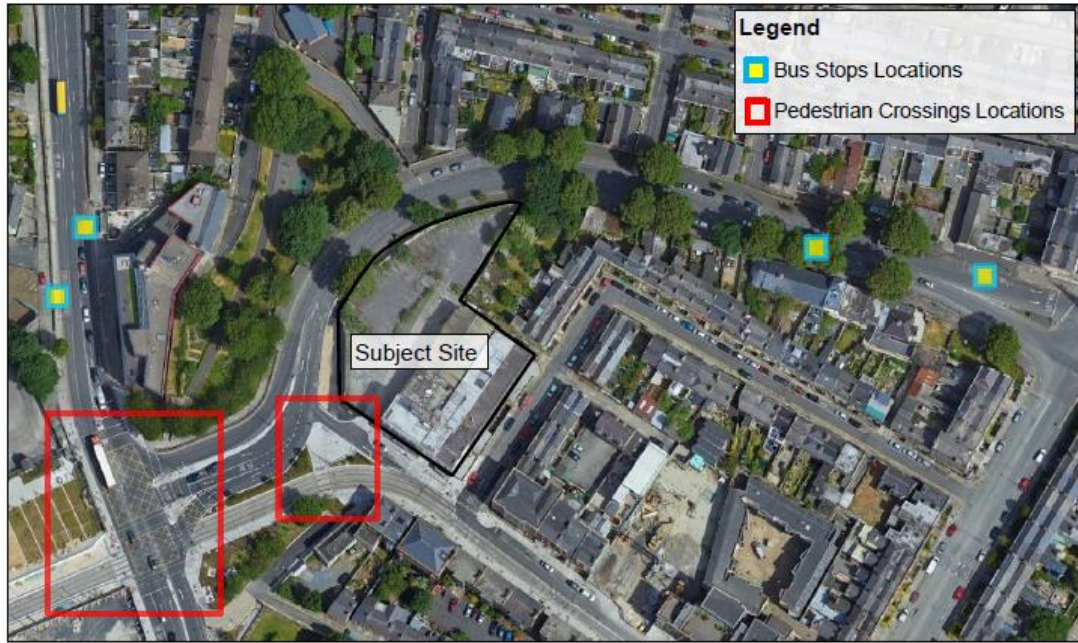
*The criteria for assessment of developments at the scale of the relevant city / town:*

*The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.*

- 2.39. The proposed shared living accommodation scheme and neighbourhood uses proposal is located within 100m (a 2 min walk) of the Broadstone green line Luas stop, a high-frequency public transport mode. In addition, the site is located adjacent to 4 no. bus stops which are served by nos. 4, 9, 83, 83a, 140 and 155 bus services which run to the north and south of Dublin, via the city centre.
- 2.40. These bus services are delivered by Dublin Bus along Constitution Hill and R135 Western Way. The nearest bus stops are numbers 195 (northbound) and 190

(southbound) on Constitution Hill, located approximately 180m (2-minute walk) west of the proposed site entrance. The nearest bus stops on Western Way are numbers 191 (south/eastbound) and 194 (north/westbound), approximately 290m (4-minute walk) to the east of the site. A good standard of footpaths and pedestrian crossings are provided along the routes to the bus stops. Full details are provided in the TTA prepared by Waterman Moylan which accompanies the application.

**Figure 4 - Location of bus stops proximate to the subject site**

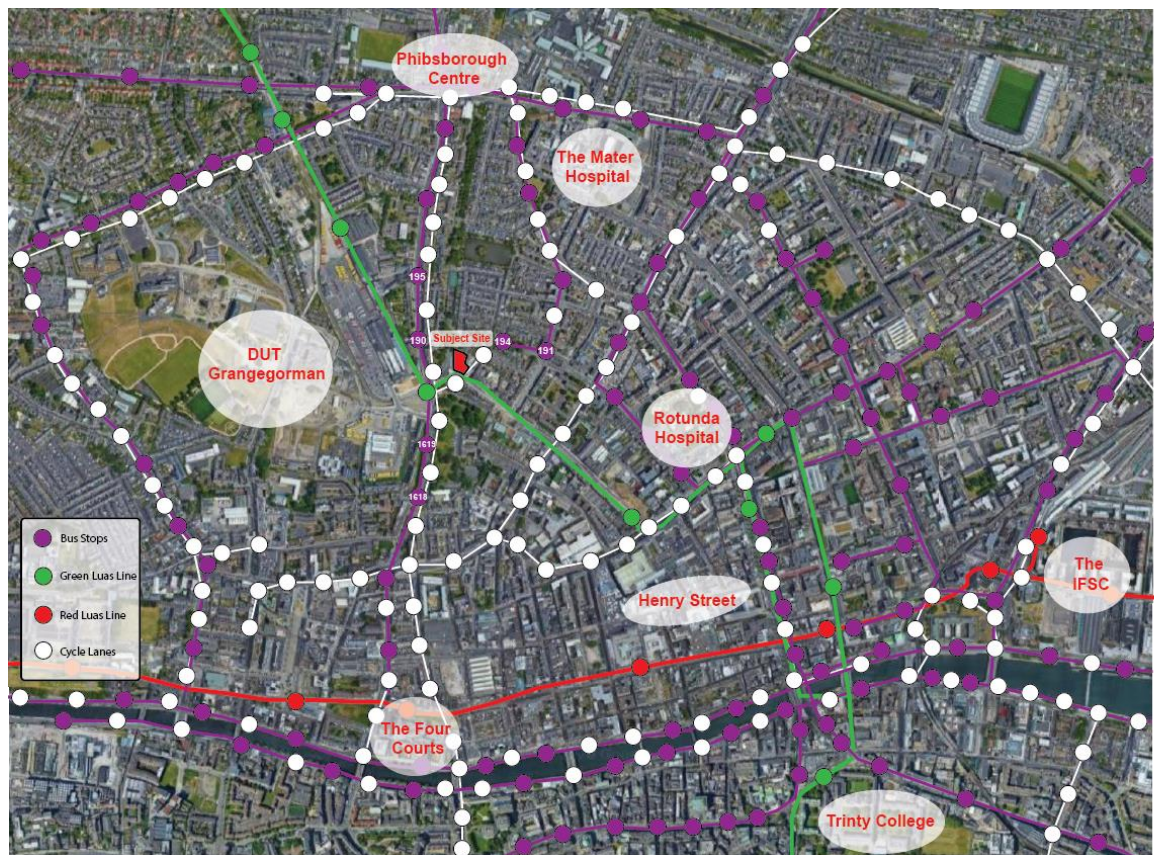


Source: Waterman Moylan Consulting Engineers (TTA)



An additional bus stop is located 120 metres to the north west on Mountjoy Street which is served by Dublin Bus Route No's 38, 38a, 38b, 38d, 40, 46a, 120, 836, 870.

**Figure 5 - Surrounding employment hubs, transport links and connections**



- 2.41. Therefore, it is evident the site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.

Development proposals incorporating increased building height... should successfully integrate into/enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment by a suitably qualified practitioner such as a chartered landscape architect.

- 2.42. A Landscape and Visual Impact Assessment has been undertaken by Kennett Consulting and accompanies the application. Photomontages from 17 no. view locations prepared by Digital Dimensions have also been prepared. In relation to the integration of the proposal into the existing receiving environment, the assessment notes:

*'The proposed development takes a dynamic and structured approach to building height. In the context of the new Urban Development and Building Heights Guidelines for Planning Authorities (2018), described earlier, the proposed development takes its cue from historic and modern buildings within and adjoining the site. The subdivided building volumes and stepped heights transition from neighbouring existing buildings, beginning with similar heights or modest steps upward. The tallest building is positioned away from one- and two-storey dwellings and utilises a prominent position facing into the wider*

*public realm to establish a significant but appropriate height response to its neighbouring context..'*

- 2.43. In relation to the topography of the site and the siting of the proposed buildings in relation to nearby protected structures, the Architectural Heritage Impact Assessment by Historic Building Consultants states:

*'The former station building at Broadstone is at a distance of 115 metres from the application site and is separated by Phibsborough Road, which is at a significantly lower level than both the station and the application site. The station building is prominent on high ground commanding the local area, while not directly addressing the adjacent street.*

*The separation between the Broadstone station building and the application site is such that there will not be any adverse impact on the character or setting of the protected structure.'*

- 2.44. In relation to the cultural context of the building and setting of key landmarks and protected views, the LVIA states:

*'The proposed development will take place in the context of a Conservation Area and several nearby Protected Structures. It is important that the proposed development makes a positive contribution to their setting and avoids competing with their character and presence in the streetscape.*

*The proposed development benefits from significant screening by buildings and trees between it and the King's Inns to the south, while the view out from Henrietta Street is not orientated towards the site and will not be affected. The view from the former Broadstone Station is presented with a harmonious composition of buildings, incorporating the Hendrons Building as a focal point, which makes a positive contemporary contribution to the setting of the former station.'*

- 2.45. The scale of the proposed development is considered to integrate appropriately with its surroundings. The proposed building height takes cognisance of the scale, height and proximity of neighbouring properties and ensures the 9 storey component of the scheme is placed on the least sensitive corner of the site, in terms of minimising impacts on existing residential dwellings.

- 2.46. The existing Hendrons Building is industrial in nature and set on a large unused car park. The adjacent warehouse buildings and dwelling are in bad dis-repair and are unsightly on this prominent corner. Redevelopment of the site whilst retaining the Hendrons building, will revitalise the site and offer significant benefits to the existing and future residents of the area, providing a greatly improved public realm, neighbourhood uses (including outdoor seating) and new planting and landscaping. The proposal will contribute greatly to the neighbourhood.

- 2.47. The Visual Impact Statement concludes that:

*'Adverse impacts on the character and views of surrounding built heritage have been successfully avoided by the proposed development incorporating mitigation throughout the design process. There is no direct effect on the fabric or curtilage of any Protected Structures and the architectural expression adopted in the scheme complements views of Protected Structures and from*

*Conservation Areas. As a result, Development Plan policies SC28, CHC2 and CHC4 are satisfied.*

*Landmarks and key views are considered in Policy SC7 of the Development Plan, and in the Urban Development and Building Heights Guidelines for Planning Authorities (2018). While the proposed development does not fall within designated views/prospects in the Development Plan, it responds to the landscape context of the Broadstone Station and the environs of King's Inns to ensure that it remains screened from view or makes a positive contribution to their urban landscape context.'*

- 2.48. The application is also accompanied by an Architectural Heritage Impact Assessment prepared by Historic Building Consultants. The report includes an assessment of the potential impact of the scheme on nearby protected structures including Kings Inn, the Black Church, Broadstone (former station building) and the concludes:

*"There is a significant body of opinion that seeks to ensure the retention of the Hendron's building and the building has recently been added to the record of protected structures. The present proposal respects that opinion and has incorporated the Hendron's building within the development. Opinions in relation to the buildings at the rear are not so evident and the principal argument put forward to date for the retention of the main building – the report by Paul Arnold Architects in 2008 – concludes that the buildings to the rear are not worthy of retention. This opinion has been reflected in the more recent decision by Dublin City Council to add the Hendron's building to the record of protected structures, which has specifically excluded the ancillary buildings from the protection.*

*Number 36 Dominick Street Upper is mentioned in some quarters as being of significance and the survival of some original elements is cited in support of its retention. Further support for its retention is cited as is its former use as a hotel in the 1920s, being a link to the former canal harbour at Broadstone. However, the canal harbour was infilled long before the 1920s. There are many buildings in Dublin that retain some original features, but which are not protected, and the condition of number 36 is such that its retention is not practicable.*

*While the Hendron's building is relatively close to a number of important buildings, notably the former Broadstone Station, the Black Church and the Kings Inns, the assessment has shown that there would be no adverse impact on these buildings arising from the proposed development. The reason for refusal of the previous application that expressed concern about the impact on those buildings was addressing a proposed development fourteen storeys high, plus penthouse, while the present proposals includes buildings that would be considerably lower.*

*In summary, the proposed development would make good use of a substantial site and would bring the prominent Hendron's building back into use while respecting its character both internally and externally"*

- 2.49. The application is also accompanied by a Conservation Development Strategy by Carole Pollard. The strategy outlines the specific methods to be implemented for the successful retention of the Hendron's Building (a protected structure) in the scheme. In relation to the relation between the building and proposed new Blocks A, C, D and E, the strategy report states:

*‘The special character of the protected structure is protected by maintaining complete separation on the northwest gable end. The proposed Shared Living Blocks C, D, and E, are situated away from the Hendron’s Building and there is clear visual and architectural distinction between the two.*

*The existing house at 36 Dominick Street which sits flush with, and directly abuts, the south-east end of the Hendron’s building is to be demolished. The proposed new Block A, which turns the corner from Dominick St Upper into Palmerston Place, sits on the footprint of the former No. 36 but is stepped back and separated with a deep recess. The second floor parapet level is at the same level as the parapet of the original building and an additional floor has been further set back to ensure that the southeast corner of the building remains clearly defined and visible from the Dominick Street Upper approach. The architectural character of the new building is sympathetic to the Hendron’s building but clearly distinguishable as new. Block A forms the Palmerston Place edge of the site, replacing derelict industrial buildings that once were part of the Hendron’s factory.’*

- 2.50. Having regard to the above it is considered that the proposal successfully integrates into and enhance the character and public realm of the area.

*On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.*

- 2.51. The proposed site is not considered to be a ‘large redevelopment site’ being c. 0.3285ha. Notwithstanding, the scheme has a clear identity, being physically separate from adjoining development and will contribute positively to the streetscape, in particular because of the retention of the Hendrons Building. Access to the site is clearly identifiable to the average passer-by via the existing main entrance and at the Hendrons Building.
- 2.52. The development seeks to assert and maintain the Hendrons building as the focal point of the scheme and will signal the location of the site while providing passive surveillance of the street. Block C whilst taller than the Hendrons building is slim in design and visually separate and does not detract from the protected structure, ensuring a sufficient variety in scale and form on the site.
- 2.53. The houses in Palmerston Place are within an area that is zoned Z2 in the Dublin City Development Plan 2016-2022, the objective of which is “to protect and/or improve the amenities of residential conservation areas”. Residential conservation areas are not architectural conservation areas (ACAs) and have not been subject to the level of analysis and are not subject to the same legal protection as ACAs. The proposed development responds to the scale of the buildings at Palmerston Place as demonstrated within the design rationale included within the Architectural Design Statement as is demonstrated in the Conservation Development Strategy prepared by Carole Pollard, which states:

*‘The physical presence of the Hendron Building is protected by maintaining separation on the northwest gable end. The proposed Shared Living Blocks C,*

*D, and E, are situated away from the Hendron Building and separated by the pedestrian/cyclist entrance route to the central courtyard at the heart of the development.*

*The proposed new Block A, which turns the corner from Dominick St Upper into Palmerston Place, sits on the footprint of the former No. 36 but is stepped back and separated with a deep recess. The second floor parapet level is at the same level as the parapet of the original building and an additional floor has been further set back to ensure that the southeast corner of the building remains clearly defined and visible from the Dominick Street Upper approach. The architectural character of the new building is sympathetic to the Hendron building but clearly distinguishable as new.'*

2.54. As noted in the LVIA:

*'Building height, setbacks and roofscape have responded to neighbouring buildings to create a dynamic series of volumes and building heights, transitioning from neighbouring 2-4 storey houses towards the nine-storey building fronting Western Way and framing the Hendrons Building. The stepped and interlocking building volumes break down the scale and mass of the development to better integrate with its surroundings, echoing some of the character of the Hendrons Building and nearby Broadstone House.'*

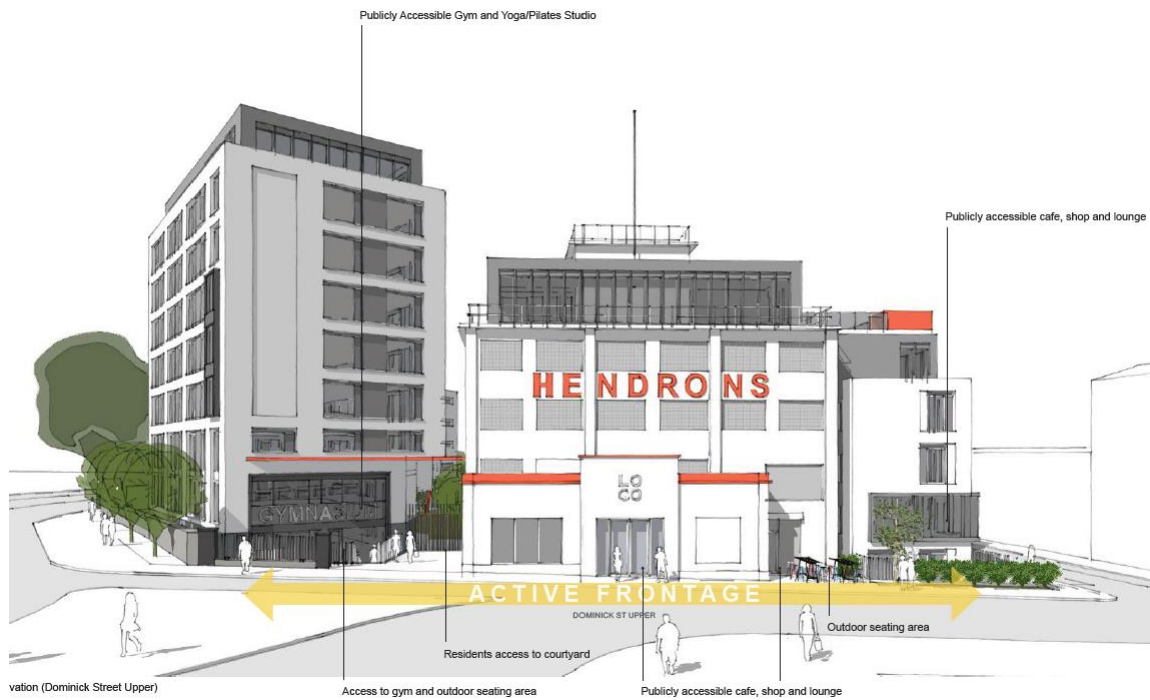
2.55. The Architectural Heritage Impact Assessment Report states (at p. 40):

*"In view of the separation between the proposed building at the rear of the houses and the design, height and facing materials of the building adjacent to the houses there would be no significant impact on the character of the residential conservation area. The removal of the present unsightly industrial building would be a positive change adjacent to the residential conservation area."*

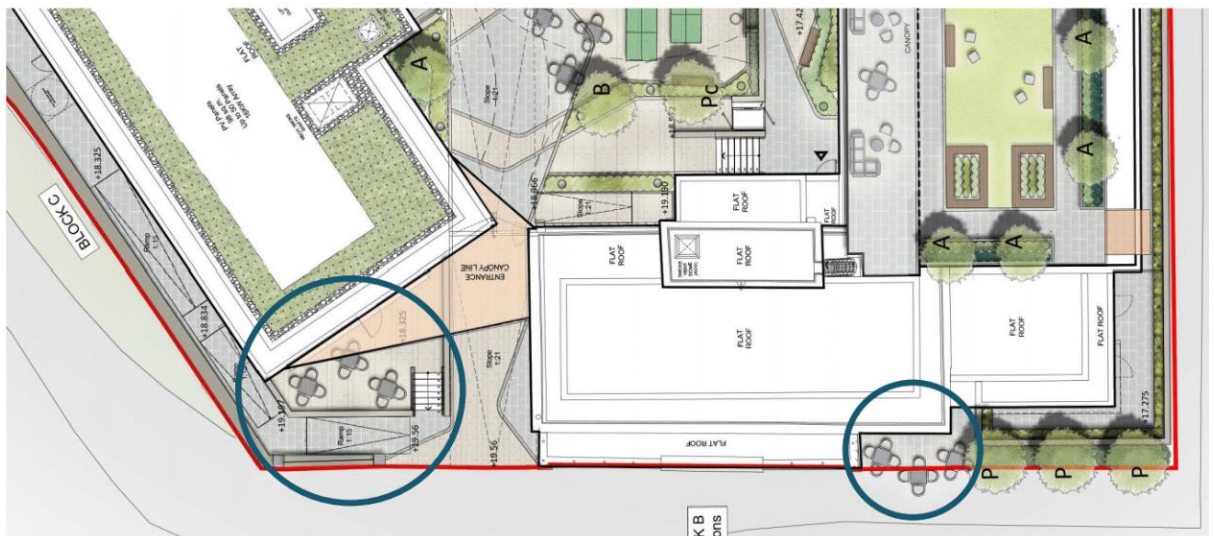
2.56. The proposed development will contribute to the creation of a sense of place by retaining the Hendrons Building and introducing publicly accessible uses to the ground floor of Blocks A, B (the Hendrons building) and Block C including a shop/café, gym and yoga/pilates studios. Community spaces will also be provided at the ground floor of the Hendrons building and within Block A after hours. It is anticipated that these spaces will be utilised by local groups and interest to date has been expressed by the Order of Malta and local artists.

2.57. Outdoor seating is also proposed adjacent to both the gym and café to create an active frontage on Dominick Street Upper with synergies expected to develop between the complementary uses on site.



**Figure 6 - Sketch Model of the proposal showing the active street frontage at Dominick Street Upper**

Source: John Fleming Architects

**Figure 7 - Proposed outdoor seating activating the site frontage**

Source: Park Hood Landscape Architects

2.58. Therefore, the proposed development will greatly contribute to urban place making, whilst creating visual interest on the street, through the re-use of a twentieth-century vernacular modernist style building in addition to carefully considered, complementary, new buildings on the site.

2.59. The Visual Impact Statement concludes that:

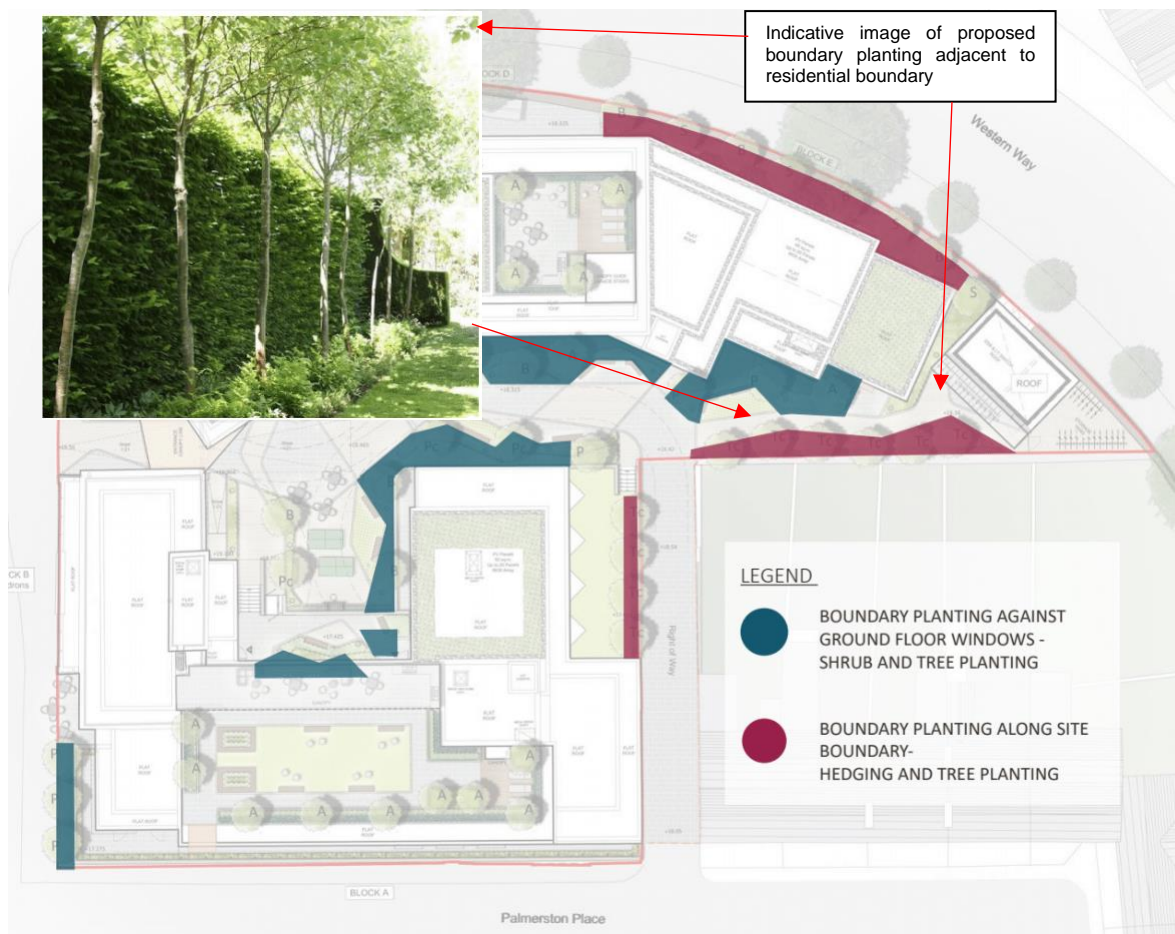
*'The proposed development employs imaginative contemporary architecture that responds sensitively to its context, respecting local built heritage and reinforcing established and emerging architectural forms. A high standard of*

*architecture promotes excellence in the ordinary, enlivens the adjacent streets and makes a strong positive contribution to local identity and placemaking.'*

At the scale of district / neighbourhood / street

The proposal responds to its overall natural built environment and makes a positive contribution to the urban neighbourhood and streetscape

- 2.60. It is considered that the proposal introduces a high-quality development at an underutilised area of land within an urban context and will make a positive contribution to the receiving urban environment. This is further supported by the commentary on the criteria already addressed above. The careful design and scale of development is considered to make a positive contribution to the urban neighbourhood through the re-establishment of a strong building line and streetscape on Western Way, whilst providing a greatly improved building form on Palmertson Place. As detailed within the accompanying Photomontages and Landscape and Visual Impact Assessment (LVIA) by Kennett Consulting, the proposal visually integrates successfully with the surrounding urban landscape.
- 2.61. The majority of the site is currently devoid of any substantial planting with the exception of a small area of scrub adjacent to the western boundary. The proposed scheme will introduce a landscaped central courtyard including boundary planting adjacent to the rear gardens of dwellings on Palmerston Place, providing an improved outlook from the existing dwellings. The scheme will reintroduce planting to this industrial site softening and improving the current setting of the site.

**Figure 8 - Proposed boundary planting treatments**

Source: Park Hood Landscape Architects

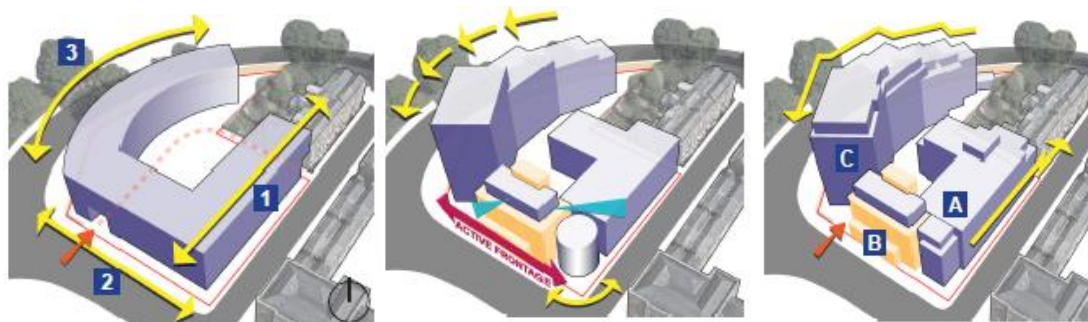
- 2.62. The proposed scheme interacts with the public domain, includes landscaping and planting on the boundary and will include active uses in the form of a café/shop with community spaces and a gym and yoga/pilates studios at street and lower ground floor level. The scheme encourages interaction with the public domain and will greatly improve the existing conditions on Dominick Street Upper.

The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of perimeter blocks or slab blocks with materials / building fabric well considered

- 2.63. The proposed designed has taken account of the need to break up the mass of the building and this has informed the design rationale and scheme design as proposed. The proposal could not be considered monolithic and avoids long uninterrupted walls as detailed in the Urban Design Report prepared by John Fleming Architects.
- 2.64. The Architectural Design Report details the rationale for the massing of the scheme ensuring the proposal is articulated and does not present a monolithic elevation:



**Figure 9 - Design evolution diagrams showing the break and built form and massing and built form of the building**



**Source: John Fleming Architects**

*'The yellow arrow indicates that the proposed block along Western Way will rise to the west. In our opinion the corner between this street and Dominick St Upper is the ideal location for a taller building for the following reasons:*

- *There are no buildings nearby, which means that it will not cast a shadow over or overlook any of the house in the neighbourhood (see "Daylight and Sunlight Impact Assessment" submitted with this application);*
- *Western Way is a wider street and can take a taller and more dominant block;*
- *Along Dominick Street Upper the vast majority of the recently built buildings are 6 storeys which means this is a street with potential for larger scale buildings. A taller corner building at the suggested location would not represent a threat to the streetscape. To illustrate this, we put side by side on the next page a street view of the existing and another with the proposal superimposed on the image to show that it would be minimal the visible portion of the taller building and that it will merge into the streetscape.'*

**Figure 10 - CGI of proposed scheme fronting Dominick Street Upper**



**Source: Digital Dimensions**

*The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of "The Planning System and Flood Risk Management – Guidelines for Planning Authorities" (2009).*

- 2.65. As noted above, the proposal introduces a development which is compatible with its land use zoning and adjacent development. The scheme will contribute to the creation of a sense of place translated through a high-quality and unique architectural design response and a landscaping proposal which serves to enhance the experience of residents and visitors. The proposed scheme creates a sense of enclosure at street level.

- 2.66. The application is accompanied by a Flood Risk Assessment prepared by Waterman Moylan engineering consultants which concludes:

*'the various sources of flooding have been reviewed, and the risk of flooding from each source has been assessed. Where necessary, mitigation measures have been proposed. As a result of the proposed mitigation measures, the residual risk of flooding from any source is low.'*

*The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.*

- 2.67. The proposed development is logically laid out, having regard to the site's context, improving legibility of the street and creating a definite street line and frontage. Ground floor and lower ground floor uses will enhance street activity, allowing the proposal to integrate with the existing neighbourhood and urban context.

- 2.68. The proposed scheme creates a sense of enclosure at street level and revitalises this currently run-down urban block, reactivating the street frontage and introducing neighbourhood uses.

*The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood:*

- 2.69. The proposal will provide 281 no. bedspaces within 100m of a high-frequency public transport corridor (the Broadstone Luas stop) and is within walking distance of numerous employment hubs. This will significantly reduce rental pressure in the area, releasing houses for families in need in the local area. This build-to-rent, shared living proposal will provide a quality alternative housing solution to future residents who might typically have entered a share house in the locality.

- 2.70. In addition, 432.3 sqm of publicly accessible uses including a gym, café/shop and yoga studio are proposed within the scheme to the benefit of the proposed future residents and the existing community surrounding the site. The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.

*At the scale of the site/building*

*The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.*

*Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight' (2nd Edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'.*

*Where a proposal may not be able to fully meet all 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, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints 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.*

- 2.71. As demonstrated in the suite of documentation prepared by John Fleming Architects, the form and massing of the scheme has been carefully designed to maximise access to natural daylight and minimise overshadowing and loss of light.
- 2.72. The proposed design is centred around a central courtyard, maximising light to the inner floor plate of the building. The same design technique ensures daylight access is maintained to adjoining properties to the east of the site and overshadowing is reduced. The outlook from the east will front the landscaped courtyard component of the scheme.
- 2.73. A Sunlight/Daylight Analysis Report has been prepared by Digital Dimensions and accompanies the application. The sunlight / daylight analysis assessed the level of light access within rear gardens and windows of neighbouring residential properties on Palmerston Place and the following is noted:

***Sunlight to Gardens and Open Spaces***

*'There is no loss of sunlight to any of the rear amenity spaces assessed. The majority will have an increase in sunlight hours over the amenity space. The proposed development meets the BRE guidelines for gardens and open spaces.'*

***Detailed assessment to adjoining dwellings***

*'A small number of windows a marginally lower than the recommendations with the majority meeting or exceeding the current levels of daylight availability. The BRE guidelines states that "Where the loss of light is well within the guidelines or only a small number of windows or limited area of open space lose light (within the guidelines), a classification of negligible impact is more appropriate." The proposed development meets the recommendations of the BRE guidelines an any impact will be negligible.'*

- 2.74. In this regard, 51% of the windows surveyed (on Palmerston Place and Dominick Street Upper as identified at Section 3.3 of the accompanying report) will result in improved daylight access when the proposal is complete. 4 no. windows will remain unchanged. The remainder meet BRE guidelines as stated above with a small number resulting in a minor impact on existing daylight access.
- 2.75. Where a minor non-compliance is identified, it is noted that the existing situation is an unusual one for an inner-city location with a large undeveloped surface carpark currently adjoining the existing dwellings on Palmerton Place directly to the rear. In accordance with national policy and the CDP, development of such sites is noted as a keep objective, especially in instances (such as the subject site) adjacent to high-frequency public transport. We also note that where a minor loss in daylight is noted, an increase in sunlight to rear gardens is recorded.
- 2.76. It is also noted that proposed Block E is located between 25.6m and 27.4m from the rear of the existing dwellings. The site is noted as being constrained in this regard owing to its brownfield, infill nature, with any proposal developed in accordance with development plan guidelines for the area likely to have an impact on neighbouring properties.

- 2.77. The NPF and Apartment Guidelines signal a move away from rigid design requirements in respect blanket restrictions on height or separation distances in favour of quality designed schemes. It is considered that the separation distance proposed is appropriate in the context of the site's inner city location and nature of the brownfield infill site. The proposed siting and design enable the land resource to be optimised.
- 2.78. Given the location of the site and nature of the proposal, the design benefits of the proposed scheme are considered to compensate any impacts upon neighbouring properties to a certain extent. The proposals will regenerate an underutilised brownfield site and implement a sustainable residential BTR scheme which will contribute to achieving national and regional planning policy and guidance. The proposals will contribute positively to the aesthetic quality of the urban environment and optimise the use of a valuable piece of inner city brownfield land.
- 2.79. Impacts upon neighbouring properties has been improved by the replacement of the existing warehouse buildings with a sensitively designed building further setback from the adjoining boundary. This has resulted in improved sunlight access as noted.
- 2.80. The report also assesses the proposed scheme against the BRE guidelines and states:

***Daylight to Proposed Development***

*'All relevant rooms on the lower ground and upper ground floor exceed the minimum recommendation for Average Daylight Factor and will have adequate daylight. The proposed development meets the criteria set out in BRE Guidelines and BS8208 Part 2:2008 Lighting for Buildings, Code of Practice for Daylighting.'*

**Specific Assessments**

- 2.81. SPPR 3 also states that specific assessments **may** be required to support developments '*at some or all of these scales*'.<sup>2</sup> The specific assessments are outlined below with a comment included noting how each criteria is addressed, if relevant to the subject proposal:
- *Specific impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measures to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.*
- 2.82. **Comment:** A wind microclimate assessment is not considered appropriate in this case as the proposed building is 'low rise' and below 30m in height and the proposed tree planting, will mitigate any minor downdraft conditions. The buildings range in height from 4 storeys to 9 storeys and are not considered to be of a sufficient height to create micro-climatic effects.
- 2.83. An Energy Statement is also submitted with the proposal prepared by Waterman Moylan. Overall, the proposal will have a positive impact on climate change, contributing a sustainable building design, on a brownfield site in close proximity to public transport.
- *In development locations in proximity to sensitive bird and / or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and / or collision.*

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<sup>2</sup> Emphasis added.

- 2.84. **Comment:** The application is accompanied by a Bat Assessment prepared by Wildlife Surveys and concludes there are no bat roosts on the site. Notwithstanding this, bat boxes are included in the proposal as recommended and are noted on the landscape masterplan prepared by Park Hood Landscape Architects. Further, a lighting plan has been prepared to ensure appropriate lighting across the site and additional planting will provide feeding opportunities should any bats use the site. The report concludes:

*'There is no evidence in any of the buildings (elements of the same building) and it is very improbable that this building has recently or ever served as a roost. This impact is likely to be moderate and long-term if there is roost loss and no obvious equivalent replacement for the roost loss. From available evidence, this is not an impact in this project....'*

*'There will be no impacts upon bats following the proposed mitigation. Should bat boxes be used by bats, this would potentially represent an enhancement for bats as there is no evidence of bat usage of the existing buildings.'*

- 2.85. The application is accompanied by an Ecological Impact Assessment and AA Screening Report prepared by Openfield. In relation to sensitive bird areas, the AA Screening report includes an ecological assessment of the site from this perspective and concludes:

*'The subject site is located in a heavily urbanised environment close to significant noise and artificial light sources such as roads. This development cannot contribute to potential disturbance impacts to species or habitats of for which Natura 2000 areas have been designated.'*

- 2.86. The proposed development is marginally above the height limit and located in a highly urbanised area and will not result in bird collisions. The proposed materials do not include significant glazing and an issue in this regard is not likely to arise.

- 2.87. This report and the accompanying Ecological Impact Assessment demonstrate that the proposed building heights do not have the potential to adversely impact on the biodiversity of the area:

*'The building is used by nesting Feral Pigeon *Columba livia*. This is a bird of low conservation concern (Coulhoun & Cummins, 2013). No other nesting birds were recorded during the August 2020 survey, which lies within the nesting season. The habitats on the development site are not suitable for wintering/wetland/wading birds which may be associated with Natura 2000 sites.'*

- *An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.*

- 2.88. **Comment:** The subject site currently does not contain any telecommunication antennae or towers and is not of a significant height (less than 45m) that would impact on telecommunication channels. Notwithstanding this, Waterman Moylan Consulting Engineers have reviewed the proposal from this perspective and note the proposal is not likely to have any impact as follows:

*'However, given the location and scale of the proposed development, it is not expected that it will have any impact on the existing telecommunication links. Any impact that might arise will be identified by the mobile operators and they will then be able to re-align their microwave links via alternative sites, or, should that not*



*deliver optimal performance, a new “hop site” can then easily be included in an appropriate location within the proposed development.’*

- *An assessment that the proposal maintains safe air navigation.*

2.89. **Comment:** Section 16.7.1 of the CDP states that:

*‘The Irish Aviation Authority must be notified in all cases where a proposed development exceeds 45m in height.’*

2.90. The proposed buildings are not of such a height as to justify any specific assessment in relation to air navigation safety. The CDP does not include any policies or management standards in relation to air navigation safety and there are no known low flight paths near the site.

- *An urban design statement including, as appropriate, impact on the historic built environment.*

2.91. **Comment:** An Architectural Design Statement has been prepared by John Fleming Architects and accompanies the application. Further an Architectural Heritage Impact Assessment has been prepared by Historic Building Consultants and a Conservation Strategy has been prepared by Carole Pollard, both of which address the Hendron’s Building and boundary wall, which are protected structures.

- *Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.*

2.92. **Comment:** The application is accompanied by an AA Screening Report, Ecological Impact Assessment and EIA Screening report as required.

2.93. From the above analysis, it is considered that the proposal meets the criteria for higher buildings as set out within the Guidelines on Building Height Guidelines. The site is well placed to absorb a high-density development which is appropriately scaled and designed in the context of its urban surroundings, at a highly accessible location and in close proximity to high frequency public transport. The site also benefits from easy access to major employment centres such as the Mater Hospital as well as connections to other surrounding areas such as the IFSC (1.3km from the site).

2.94. The proposals make optimum use of this underutilised area of land which is zoned for neighbourhood development (including residential uses) and is therefore considered compatible with adjacent existing land uses. The scheme integrates appropriately with the suburban environment and enhances the public domain.

2.95. It is respectfully submitted that the proposed development has had regard to the planning policy framework as set out in the Guidelines and the National Planning Framework. The provision of proposed scheme at this location up to 9 no. storeys is supported by the Urban Development and Building Height Guidelines which encourages increased density and building heights. As such, the proposed development is considered to be in accordance with the provisions of national policy guidelines.

2.96. It is therefore reasonable to conclude, in accordance with Section 37(2)(b)(iii) that –

- (iii) *permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines*

*under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government*

### **3.0 CONCLUSION**

- 3.1. As set out in Section 37(2)(b) and Section 28(1)(C) of the Planning and Development Act 2018 (as amended), An Bord Pleanála may materially contravene a development plan where national planning policy objectives take precedence. In particular, Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan or Local Area Plans, the provisions of SPPRs must be applied instead. In the present context, the most relevant of these requirements SPPR 3A of the Building Height Guidelines which applies to the assessment of this application to the Board. It is submitted that the performance criteria under Section 3.2 have been satisfied in this regard by the development as proposed.
- 3.2. It is respectfully submitted that should An Bord Pleanála consider the proposed development is a material contravention of the Dublin City Development Plan 2016-2022, an appropriate justification is set out within this statement demonstrating that the proposed development should be considered for increased building heights due to the location of the subject site, the incorporation of a protected structure into the scheme, the overall context of wider existing developments, proximity to high-frequency public transport corridors, and compliance with the policies and objectives set out within the Urban Development and Building Heights Guidelines 2018.
- 3.3. In particular, it is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the City Development Plan, by reference to sub-paragraphs (i), (iii) of Section 37(2)(b) of the 2000 Act, as amended, for the reasons set out above.
- 3.4. Having regard to the justification set out within this statement, it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with national policy and guidelines.