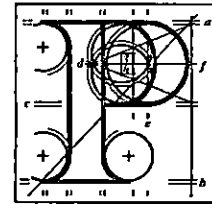


**Our Case Number:** ABP-317273-23

**Planning Authority Reference Number:** SD22A/0406



**An  
Bord  
Pleanála**

South Dublin County Council  
Planning Department  
County Hall  
Tallaght  
Dublin 24

**LAND USE, PLANNING  
& TRANSPORTATION DEPT.**

**- 8 JUN 2023**

**Date:** 07 June 2023

**Re:** Construction of 2 commercial units and 8 apartments  
Paintworld, 1-2 Ballymount Road Lower, Dublin 12

Dear Sir / Madam,

Enclosed is a copy of an appeal under the Planning and Development Act, 2000, (as amended).

Submissions of documents etc., to the Board. N.B. Copies of I-plans are not adequate, all drawings and maps should be to scale in accordance with the provisions of the permission regulations.

1. The planning authority is required to forward specified documents to the Board under the provisions of section 128 and section 37(1)(b) of the Planning and Development Act, 2000, (as amended). Please forward, within a period of 2 weeks beginning on the date of this letter, the following documents:-

(i) a copy of the planning application made to the planning authority and a copy of any drawings, maps (including ordnance survey number) particulars, evidence, a copy of any environmental impact statement, other written study or further information received or obtained by your authority in accordance with regulations under the Acts. If practicable, the original of any drawing with coloured markings should be provided or a coloured copy,

(ii) a copy of any technical or other reports prepared by or for the planning authority in relation to the application,

(iii) a certified copy of the relevant Manager's Order giving the decision of the planning authority,

(iv) a copy of the notification of decision given to the applicant,

(v) particulars of the applicant's interest in the land or structure, as supplied to the planning authority,

(vi) a copy of the published notice and a copy of the text of the site notice erected on the land or structure.

(vii) a copy of requests (if any) to the applicant for further information relating to the application under appeal together with copies of reply and documents (if any) submitted in response to such requests,

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D01 V902

(viii) a copy of any written submissions or observations concerning the proposed development made to the planning authority,

(ix) a copy of any notices to prescribed bodies/other authorities and any responses to same,

(x) a copy of any exemption application/certificate within Part V of the 2000 Act, (as amended), applies,

(xi) a copy of the minutes of any pre-planning meetings.

2. To ensure that the Board has a full and complete set of the material specified above and that it may proceed with full consideration of the appeal, please certify that the planning authority holds no further material relevant to the case coming within the above list of items by signing the certification on page 3 of this letter and returning the letter to the Board.

3. In addition to the documents mentioned above, please supply the following:-

Particulars and relevant documents relating to previous decisions affecting the same site or relating to applications for similar development in near proximity. "History" documents should include;

a) Certified Manager's Order,

b) the site location, site layout maps, all plans and

c) particulars and all internal reports.

Copies of I-plan sheets are not adequate.

Where your records show that a decision was appealed to the Board, it would be helpful if you would indicate the Board's reference.

Submissions or observations by the planning authority.

4. As a party to the appeal you may, under section 129 of the 2000 Act, (as amended), make submissions or observations in writing to the Board in relation to the appeal within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered, and where none have been validly received, the Board may determine the appeal without further notice to you.

#### Contingency Submission

5. If the decision of your authority was to refuse permission, you should consider whether the authority wishes to make a contingency submission to the Board as regards appropriate conditions which, in its view, should be attached to a grant of permission should the Board decide to make such a grant. In particular, your authority may wish to comment on appropriate conditions which might be attached to a permission in accordance with section 48 and/or 49 of the 2000 Planning Act, (as amended), (Development / Supplementary Development Contributions) including any special condition which might be appropriate under section 48(2)(c) of the Act.

Any such contingency submission, in circumstances which your authority decided to refuse permission, would be without prejudice to your authority's main submission in support of its decision.

Please quote the above appeal reference number in any further correspondence. I hereby certify that the planning authority has complied with section 128 and section 37(1)(b) of the 2000 Act, (as

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# MODULE

ARCHITECTURE | INTERIORS | PROJECT MANAGEMENT

Alan & Monica Holmes  
c/o Zubi Efobi  
1st Floor  
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Lucan  
Co. Dublin

Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

6<sup>th</sup> June 2023

<b>AN BORD PLEANÁLA</b>	
LDG- <u>064141-23</u>	
ABP- _____	
06 JUN 2023	
Fee: € <u>1,500</u>	Type: <u>CHP</u>
Time: _____	By: <u>hand</u>

Dear Sir/Madam,

**RE: FIRST PARTY APPEAL AGAINST SOUTH DUBLIN COUNTY COUNCIL DECISION TO REFUSE PLANNING APPLICATION REG. REF. SD22A/0406, 10 MAY 2023.**

**Development Description:** Demolition of an existing commercial two storey building and the construction of 2 commercial units with Plantroom on Ground floor level with 8 residential apartments comprising 2 one Bed apartments 3 two bed apartments and 3 three bed apartments all with private balconies over 4 floors; A communal roof garden is located on the fourth floor; Enclosed bin stores for the commercial and residential units is located at the rear of the building; 5 total car parking spaces including 1 disabled car space is provided; 8 bicycle spaces are provided at the front for commercial units and 10 no. bicycle spaces at the rear for residential units; Sustainable drainage (SuDs) roof and roof garden are provided for the development and all associated engineering and site works necessary to facilitate the development.

**Development Address:** Paintworld, 1-2 Ballymount Road Lower, Dublin 12

On behalf of our clients, Alan and Monica Holmes (joint Applicants; Address: Willowdale, 24 Orwell Park, Rathgar, Dublin 6), we Module Architects (Agents; Address: 1st Floor, Chapel Hill, Lucan) wish to appeal the decision of South Dublin County Council ('SDCC') in respect of the above referenced application for planning permission (SDCC Reg. Ref. SD22A/0406) at a site at Paintworld (Site Address: 1-2 Ballymount Road Lower, Dublin 12).

While we are disappointed in the decision to refuse planning permission, we welcome SDCC's clear acceptance of the principle of development for mixed use commercial and residential development on this infill site. Page 10 of the CE Report confirms:



*"Residential development is a permitted in principle use under this zoning objective, as are Restaurant/Café and Shop-Local".*

We consider the subject site presents a key opportunity site in this local neighbourhood centre – both to upgrade and expand the retail offer, and to contribute to the mix of dwelling types in the area. We consider if permitted, the development would positively contribute to the existing streetscape, would provide good quality accommodation and would not injure the amenities of surrounding properties. We would be very grateful if An Bord Pleanála ('the Board') would give fresh consideration to this proposal in light of these considerations.

In support of this case, enclosed please find:

- A completed Appeal Form;
- An additional design option for consideration by the Board
- A Drainage Report, prepared by ONCE Engineering
- A cheque in the amount of € €1,500.00 in respect of the planning appeal fee (Appeal Type A3).

In the following section we consider each of the grounds of appeal in turn. Having reviewed the CE reports, the single greatest issue raised by SDCC appears to relate to the proposed building height (at 5-storeys). This design approach was led by a number of factors, including an encouraging preplanning engagement to this effect, as well as development viability. As the Board will be aware, we had made the suggestion to SDCC that the height of the building be amended by way of a restrictive condition if height remained the prevailing concern on reviewing the revised design (submitted at further information stage).

We maintain our position that the height as originally proposed is appropriate – acting as a catalyst for redevelopment of the surrounding and adjoining properties, achieving more housing units on the site and delivering on a key policy objective of increasing housing supply. We consider the scheme has the potential to act as a positive planning precedent demonstrating what can be achieved on a small constrained infill site close to good transport links (BusConnects). Further we provided an example to SDCC of a similar situation in a local centre where a 5-storey building was permitted by ABP adjoining a two storey structure. We are unclear why the planner did not find this example comparable.

The second key issue appeared to be the quality of design. We considered, that the revised approach submitted at FI stage simplified and upgraded the primary elevation as it fronted on to the Ballymount Road – and that it was of sufficiently high quality design. We avoided overhanging of the streetscape and employed quality materials and finishes. While the planner was seeking recesses in the elevation – this was practically challenging, as recesses would have negatively impacted on the internal spaces and the achievement of the required room sizes. We maintain our position that the design approach is a high quality one – which would contribute positively to the public realm and integrate well into the streetscape.



In responding to this appeal, and without prejudice to the genuine attempts to address the planning authority's concerns in the response to FI, we have considered whether there were additional design options which could be explored. We attach an architectural design pack to this appeal, proving: A development proposal of just 4-storeys in height for consideration;

We would be grateful if the board would be minded to considering this option in the consideration of this case.

Please find enclosed the following drawings and particulars:

- P2002 – Proposed Floor Plans
- P4001 – Proposed Elevations
- P4002 – Existing & Proposed Contiguous Elevations
- P5001 – Proposed Sections
- Housing Quality Assessment
- Drainage Design Report



## Response to Grounds of Appeal

We consider each of the Reasons for Refusal in turn below.

### Reason 1

*Although the constrained nature of the site is acknowledged by the Planning Authority, concerns regarding the parking and access arrangements, and impacts on traffic in the vicinity of the development have not been sufficiently addressed. The scheme would result in a dominance of car parking in the Public Realm, contrary to QDP6 Objective 1, QDP6 Objective 6, Section 12.5.4 'Public Realm: (At the Site Level)' and Section 12.7.6 'Car Parking Design and Layout' of the Development Plan 2022 – 2028. In addition, appropriate details for parking management to prevent non-residents utilising surface level car parking have not been provided, the raising of the kerb is not acceptable to the Planning Authority as this will not reduce illegal car parking to the front of the site. Furthermore, there are concerns regarding visibility from the site, given the existing parking arrangements of developments either side of the subject site, and the applicant has not provided appropriate sightlines or accurate plans demonstrating the provision of the required visibility splay. Swept path analysis for larger vehicles such as refuse, deliveries and fire trucks has also not been provided. Without this information it cannot be determined that the scheme would not result in a traffic hazard. In redeveloping the site, significant regard must be had to improving the public realm and traffic arrangements. Proposals that would result in a continuation of unsatisfactory traffic and parking arrangements are not acceptable. On the basis of a lack of information in relation to the aforementioned, it is considered that the scheme would likely result in a traffic hazard and poor public realm as a result of the dominance of surface car parking.*

We welcome acknowledgement by the Planning Authority that this is a small constrained infill site. It is located close to the Walkinstown Roundabout within 38 m and currently has the benefit of 12 no. spaces in double bank bays without disabled parking space to the front of the existing premises. This is a similar arrangement to that of adjoining businesses also. While the Applicants are owner occupiers of the existing premises and the parking area to the front, they have no ownership or control over activities on lands adjoining this site, including their parking arrangements.

We welcome and support the intention of SDCC to enhance the attractiveness, liveability, connectivity and economic vibrancy of the area through careful management of parking in the public realm. Further, we are committed to playing our part towards ensuring these objectives are met. While the planning authority is clear in the reason for refusal that their "Concerns about traffic and parking have not been addressed", what they are less clear on, is what they *would* like us to do. We have a number of options, which we would ask the Board to consider – and suggest they could be appended to any grant of permission by way of planning condition:

- Limit car parking numbers to levels that the Board/SDCC are happy with. This acknowledges the local centre location (walkability) and the close proximity to proposed high quality public transport links (BusConnects).
- Suggest that space is retained for provision of a set down/layby area for delivery trucks and other large vehicles to serve the proposed retail stores. Deliveries to the retail units could be



actively managed within specified times. At all other times the layby could be for set down purposes only and/or limited parking times.

- Provision of signage (by agreement with SDCC post-planning), outlining time limits on parking and specifying that spaces are being actively managed; and/or
- Include a requirement to retain the services of a third party agency to actively management any permitted parking spaces.

While we have no control as to what adjoining occupiers will do with their private property now or in the future, the Board could also consider permitting the parking spaces on a temporary basis only until such time as SDCC prepares a framework/public realm plan for the area, which we would be happy to comply with.

With respect to visibility splays, we note the proximity to the Walkinstown Roundabout. In this respect, there are a couple of points which we consider are worth noting – including that:

- This is a well-established site in a local neighbourhood centre. Given the small scale of the development, the proposed traffic and parking arrangements will not materially increase the traffic in the area;
- The applicants have been operating on this site for over 20 years; preceded by a financial institution before that. There is a historic legacy of parking to the front of the unit – with no recorded traffic hazard or accidents arising from these established uses.
- Traffic exiting from the roundabout will be slow-moving, decreasing the risk of any traffic hazard;
- In the last number of years, the Board granted a Take Away in the vicinity of the site – setting a positive precedent for traffic generating uses in this area – acknowledging its local neighbourhood centre designation.

With respect to larger vehicles, including refuse vehicles, it is suggested that the site can be serviced easily from Ballymount Road Lower – onto which the site fronts. This recognises that larger vehicles would only occasionally service the site. Given excellent access from the front, high reach appliances would be able to get within close proximity and within clear sight of the dry riser inlet connection to the building. From a fire regulation point, the proposed building volume is less than 7,000 sqm with the top floor under 10m. On this basis we consider there is sufficient means of external access from the front to enable fire appliances to be brought near to the building for effective use, in line with the Building Regulations. In the event of any grant of planning permission, a separate application will be made for a Fire Safety Certificate.

## Reason 2

***The applicant has not reduced the density of the scheme as requested and has not adequately justified the proposal for increased height and density at the site, per Section 12.5.3 'Density and Building Heights', of the Development Plan. Higher density development is acceptable in instances where schemes are well designed and attractive and would provide significant enhancements in relation to public realm and the overall character of the area. It is not considered that the current scheme meets these benchmarks on a performance-basis. The scheme as currently designed would result in a discordant addition to the streetscape, with the***



***building appearing overly tall and bulky. In addition, the relationship with buildings to the rear of the development site is not well-resolved. As currently proposed, the scheme does not comply with Policy QDP3, to 'Support and facilitate proposals which contribute in a positive manner to the character and setting of an area' or QDP7, to 'promote and facilitate development which incorporates exemplary standards of high-quality, sustainable and inclusive urban design, urban form and architecture', of the Development Plan 2022 – 2028. The proposal would interfere with the character of the urban landscape in the area and is therefore not considered to be consistent with the proper planning and sustainable development of the area.***

We consider we made a strong case for the additional height of the building in our response to Further Information – and in fact consider that the proposal would both set a positive precedent and would present as a catalyst for future development of the adjoining sites including the site to the rear.

In reviewing the CE Report (page 11 refers), the findings of the Forward Planning Section of SDCC are noteworthy. They consider that the proposed development is in line with the City Edge Strategic Framework, adding that the restricted parking provision is welcome in the context of the forthcoming BusConnects project, and also in respect of the achievement of mixed and balanced communities. Further we note in particular the Forward Planning Section referred to the welcome scale of the proposal, which they found, was appropriate in the context of not only the zoning, but the future more intensive redevelopment of the adjoining City Edge Area. In full, the Forward Planning Section found:

*"It is considered that the principle of mixed use commercial and residential development at this location will not compromise the vision or objectives of the City Edge Strategic Framework. The restricted parking provision is welcome in view of the imminent introduction of the City Centre to Greenhills core bus corridor which would serve this area. The mix of apartment sizes is also welcome with respect to promotion of mixed and balanced communities as envisaged by the Framework. The building scale would appear appropriate in the context of the local centre zoning and the future more intensive redevelopment of the adjoining wider City Edge area.*

While they did express concern respecting the design approach ("issues of integration with existing contiguous development and the visual amenity of the streetscape"), these concerns were subsequently addressed when the primary façade was revised and improved (as part of the response to request for further information). We respectfully refer the Board to the design statement which accompanied the response to further information.

However, the Planning Case Officer did not concur with the views of the Forward Planning Section, responding to the above opinion stating:

*"While an increase in the scale of the existing building at the site would be accepted in principle, it is not agreed that the scale of the building as proposed is acceptable, especially given the context of the surrounding area, and similar mixed use developments that have come forward in the area." (CE Report Page 11)*

Regrettably, these mixed messages have characterised our experience of working with SDCC on the site to date. In this respect, we were assured in preplanning 28 June 2021 with Tracy McGibbon that at 5-stores in height, the proposed scale of the building was acceptable.





In bringing forward this proposal there has been a genuine attempt on the part of the applicants to best meet the planning authority's requirements, ensuring a good quality of internal environment (dual aspect, good private open space, ample shared public space at roof top level, ensuring internal design standards are met). This has been balanced with our strong agreement with the position of the Forward Planning Section, as to the appropriate scale. This section are responsible for setting the policy context within which regeneration and brownfield sites can be activated to deliver housing in existing established communities on opportunity sites such as this.

We also consider that the policy of the National Planning Framework (NPF), as it applies to standards bears repeating, which provides:

*"To enable brownfield development, planning policies and standards need to be flexible, focusing on design-led and performance-based outcomes, rather than specifying absolute requirements in all cases. 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 cannot account for the evolved layers of complexity in existing built-up areas"* (NPF, page 67)

This pragmatic approach to planning for infill development is further enshrined in National Policy Objective 13, which provides that:

*"In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected."* (NPF, page 67)

Given the relatively small scale of the development with just 8 units above retail, we consider that there should be a reasonable degree of tolerance should be applied. Notwithstanding, our consideration of the strong case for additional height and density in this location, we are proposing a four storey option for the Board's consideration should they find it appropriate.

**Option Description: Reduction in Height:**

- We note the position of the SDCC case officer, who states " a condition could be included to reduce the height of the scheme in the event of a grant." We confirm the applicant is happy to accept a condition to this effect should the Board so require. That said, we would be grateful if strong consideration could be given to retaining the height as proposed.
- As part of the response to this appeal, we have included details of the scheme with one storey removed. We refer the Board to the contextual elevation of the proposal.

**Design of the Building:**

- The Planner in her report provides:  
*"It is not considered that the scheme, as currently designed, is of a sufficient architectural quality to mitigate the impacts of such a high density at the site and the precedent it would set for similar schemes in the area."*
- Further, that:



*"On a small scheme at this prominent location, it is considered that further consideration could have been had to creating an interesting and attractive building, utilising insets and step downs and other measures."*

- As outlined previously, as designers, we had to carefully balance internal accommodation and standards with achieving design approaches such as insets. We consider the building as proposed, represents a good quality approach to urban infill development.
- The proposed option provides an alternative elevation showing insets to the design of the building to add further character. We do not consider this amounts to a material change to that which has already been proposed, and further are happy to agree any final matters of detail (including materials and finishes, signage and lighting) with the Council post planning.

We would be grateful if you could consider these options in your deliberations on this case.

### **Reason 3**

***The communal open space provided would not be provided with adequate levels of daylight to provide adequate amenity value. In addition, the amenity value of private balconies is not acceptable due to the inclusion of 1.8m obscure balcony glazing, thereby not offsetting the deficiencies of the communal open space. This is contrary to Policy H9 'Private and Semi-Private Open Space', H9 Objective 1, H9 Objective 2 and Section 12.6.7 'Residential Standards'. The absence of public open space and the provision of poor quality private and communal open space are contrary to the Development Plan 2022-2028, would provide poor levels of residential amenity for future occupants and would be contrary to the proper planning and sustainable development of the area.***

We have considered this reason for refusal in two parts:

#### **Open Space**

The open space at rooftop level is the only achievable way to provide shared open space on this site. There is no other location for this to be provided – and we do wish to acknowledge the extensive green infrastructure in close proximity to the site as set out in our response to further information. We submit to the Board, that the only feasible way to improve private open space is to remove the set back from the design and dedicate the entire roof to shared open space. We are happy to accept a condition in this respect.

#### **Balcony Screening**

We are happy to accept a condition limiting the height of the screening on the balconies to a level that the Board feels is appropriate. As noted above – this is an extremely constrained site. Setting the proposed building back from the rear boundary presents considerable challenges – meaning, two apartments on each floor would simply not be achievable.

In considering the revised design option, - which represents a genuine attempt to address and allay planning concerns, we do acknowledge that the Board's decision in this respect may have implications for the number of dwelling units achievable on the site. While any reduction would be disappointing, what we are really keen to understand – through good direction, is what *are* the permissible



parameters within which development is achievable – the applicants in this case are committed to ensuring quality development within these parameters to the extent possible.

## Reason 4

***The applicant has included underground attenuation as part of their proposals for Sustainable Urban Drainage Systems (SuDS) at the site. Proposals for underground attenuation are no longer acceptable to the Planning Authority, save for exceptional circumstances where other SuDS are not feasible (Section 12.11.1(iii) of the Development Plan 2022 – 2028). The applicant has not proposed sufficient natural SuDS and has not demonstrated that other measures are not feasible at the site and as such the SuDS proposals are not acceptable. In addition, the applicant has not demonstrated achievement of the required Green Space Factor (GSF) for the site. GSF is a score-based requirement that establishes minimum standards for landscaping and GI provision in new developments. SuDs interventions make a significant contribution to this scoring using this tool. Minimum scoring requirements are based on the land-use zoning of a site (GI5 Objective 4) and applies to all development comprising 2 or more residential units and any development with a floor area in excess of 500 sq m. The absence of SuDs and the failure to meet the required GSF for the site are contrary to the provisions of the Development Plan and therefore contrary to the proper planning and sustainable development of the area.***

In response to this item, please find enclosed a Drainage Design Report prepared by Tom O'Neill, ONCE Engineering, who was responsible for the drainage design. The rationale behind the approach follows the SDCC guidelines. While an attenuation tank is proposed, it is not the primary SUDs feature and serves as an additional support to the system only. It is possible to design a solution without an attenuation tank, but this is neither required nor necessary in order to meet the regulations.

The enclosed report, which is supported with information/calculations, sets out in greater detail the engineering approach to drainage design, including:

- Identifying that the proposed solution is following the SUDs guidelines
- Identifying how compliance is achieved
- Providing the rationale for the addition of tank
- Statement to confirm the proposal will limit any surface water discharge to the current allowable rates.

### Summary & Conclusion

As outlined in this appeal, and as further detailed in our response to request for further information, the proposed development:

- Conforms with the provisions of the South Dublin Development Plan and underlying zoning objective
- Has been carefully designed to complement the existing streetscape while maximising the opportunity presented by this infill site
- Does not impact on surrounding residents or business occupiers
- In all material respects would provide a good standard of accommodation for future occupiers of the scheme



- Would contribute to the vibrancy and viability of this local neighbourhood centre, contributing to the retail offer
- Would contribute to the mix of dwelling types in the area, and take advantage of the forthcoming excellent public transport links to be provided as part of the BusConnects project.

In respect of the reasons for refusal:

- We would be grateful if the Board could consider the additional design options presented within this appeal pack. As stated above, we are happy to accept a condition limiting the height of the building – which would also reduce the density of the building in line with the case officer's recommendation.
- We are happy to be led by the Board with respect to the preferred approach to parking in the public realm.
- We are happy to agree the approach to the communal open space with the Council post planning by way of compliance.
- We are confident that the approach to drainage design is fully compliant with SDCC SUDs guidance

We look forward to hearing from you in due course.

Kind regards,

**Zubi Efobi** B.Sc. Arch, M.Sc. Arch, MRIBA  
For and On Behalf of Module.